# REPORT

OF



## MAYOR'S COMMITTEE

FOR THE

## STUDY OF SEX OFFENSES.

CITY OF NEW YORK
F. H. LaGuardia
Mayor

# REPORT

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# MAYOR'S COMMITTEE FOR THE STUDY OF SEX OFFENSES

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Mr. Francis J. Kear
Deputy Police Commissioner
City of New York

Mr. Andrew C. McCarthy
Assistant District Attorney
Bronx County

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* Dr. Malcolm Goodridge was originally named Chairman but at his request, owing to the ressure of work as President of the Academy of Medicine, he was relieved and Judge Bayes as appointed to succeed him.

The following members of the Committee are deceased: Harold G. Campbell and Dr. ra S. Wile.

# REPORT OF MAYOR'S COMMITTEE FOR THE STUDY OF SEX OFFENSES.

## I. FOREWORD.

In the spring and summer of 1937, three children were murdered by sex perverts. These murders as well as other cases of sexual attacks upon children caused deep public concern. Opinion became widespread that the city was facing an epidemic of sex crime and that existing controls and methods of dealing with the sex offender were inadequate. This state of public opinion led the Citizens Committee on the Control of Crime to make its valuable study,—"The Problem of Sex Offenders in New York City". This study covered 2,022 cases of defendants arrested and charged with sex crimes in Manhattan, Brooklyn, the Bronx and Queens from July 1st, 1937 to December 1st, 1938. The study was primarily concerned with the procedural disposition of sex cases. It did not concern itself with the social or economic background and personality traits of individual offenders. Nor did it contain extensive data on the problem of recidivism among sex offenders nor on characteristics of crimes committed by sex offenders.

The Citizens Committee on the Control of Crime recommended that the Mayor appoint a committee to make a more thoroughgoing analysis of the problem of sex offenses. Acting upon this suggestion, Mayor F. H. LaGuardia appointed a committee to be known as the Mayor's Committee for the Study of Sex Offenses.

The present report is an analysis of the statistical data of these various crimes. The data were drawn primarily from the pre-sentence investigations by the Probation Departments in the Court of General Sessions, County Courts, and the Court of Special Sessions of the City of New York. These data were supplemented by information obtained from annual reports of the Police Department and the Department of Correction. In addition fingerprint records of defendants convicted of sex crimes in 1930 were submitted to the Police Department in order to determine the degree of their recidivism in the intervening years.

The Committee used as a basis for its findings and conclusions only data coming to the attention of the police, district attorneys and courts. Yet, the Committee is aware that large numbers of sex crimes that are committed never are reported to any public agency because of the reluctance of victims to bring complaints.

No funds were contributed or appropriated to meet the expense of the Committee. However, the Committee was able to call upo various services of the City for assistance in analyzing and inte preting the data collected. The Work Projects Administration sta was available for use on clerical operations. While the Committe did not make first hand clinical studies of sex offenders, this deficienc was overcome to a considerable degree by daily observation in th courts of sex offenders and by the case studies made of them by pr bation officers in the course of pre-sentence investigations.

The Committee soon recognized that a broader and more com prehensive study of sex cases passing through our courts was nece sary before sound conclusions could be reached as to the extent the sex crime problem and the methods of dealing with it. It wa felt that more should be known about the volume and specific natu of sex crime, the relation between sex crime and other types of crim the procedural factors which determine the treatment accorded to se offenders, the sentences imposed on sex offenders, the characteristi of the individuals concerned in sex crimes, the extent of abnorm personalities among sex offenders, and the degree of recidivism amo sex offenders.

The report appended herewith seeks to throw light on these ma ters. It deals with nine specific types of sex crimes which came to t attention of the police, the district attorneys and the courts throug the City of New York during the ten year period 1930-9. The crim covered by this report include the following indictable felonies dispos of in the Court of General Sessions and the County Courts:

1. Forcible rape.
2. Statutory or second degree rape.
3. Carnal abuse of child.
4. Sodomy.
5. Incest.
6. Abduction.
7. Seduction.

and the following misdemeanors disposed of in the Court of Speci Sessions of the City of New York:

8. Impairing the morals of a minor.
9. Indecent exposure.

These crimes were chosen for analysis because they involve elements of violence, abnormality and threats to the sexual integrity of women and children which constitute from the standpoint of the public the problem of sex crime.

Attached hereto are the following: (a) Recommendations, (b) Findings, and (c) Report and Analysis of Sex Crimes in the City of New York for the ten year period 1930-1939.

The Committee wishes to express its appreciation to the following persons who in addition to certain members of the Committee appeared at hearings and expressed opinions on the various phases of its inquiry:

Dr. Ephraim Shorr, Endocrinologist, New York Hospital

Dr. T. W. Brockbank, Physician and Psychiatrist

Dr. Robert Latov Dickinson, Honorary Chairman, National Committee for the Study of Sex Offenses

Dr. Robert W. Laidlaw, Secretary, Committee for the Study of Sex Variants

Dr. Walter Bromberg, Psychiatrist in Charge, Psychiatric Clinic, Court of General Sessions

Dr. Leland Foster Wood, Secretary, Commission on Marriage and the Home, Federal Council of the Churches of Christ in America

Dr. Frank J. O'Brien, Associate Superintendent, Board of Education of the City of New York

Richard L. Jenkins, Psychiatrist, New York State Training School

Dr. Eugene Kahn, Professor of Psychiatry, Yale University School of Medicine

Miss Marguerite Marsh, Welfare Council of the City of New York

Mr. Charles H. Warner, Superintendent of the Brooklyn Society for the Prevention of Cruelty to Children

Hon. Farrell M. Kane, District Attorney, Richmond County

Mr. David Dressler, Executive Director, Division of Parole, New York State

Hon. Edwin L. Garvin, Justice of the Supreme Court

Hon. George W. Martin, Judge, Kings County Court

Hon. Samuel Liebowitz, Judge, Kings County Court

Hon. Stephen S. Jackson, Justice of the Court of Domestic Relations

Mr. Leonard V. Harrison, Director, Committee on Youth and Justice, Community Service Society

Mr. John Slawson, Executive Director, Jewish Board of Guardians

Mr. Harry M. Shulman, Lecturer in Criminology, College of the City of New York

Mr. Richard A. McGee, Deputy Commissioner of Correction, City of New York

Mr. William J. Harper, Director, Westchester County Probation Department

Mr. William P. Beazell, Secretary and Executive Director, The Citizens' Committee on the Control of Crime in New York

The Committee also wishes to acknowledge the invaluable co-operation of the Chief Probation Officers of the Court of General Sessions, Court of Special Sessions, the County Courts of Kings, Bronx, Queens and Richmond counties, the Magistrates Court, the Police Department and the Welfare Council of New York City.

The Committee is indebted to John N. Stanislaus, Probation Officer of the Court of General Sessions, who directed the assembling and analysis of the factual data contained in this report, and to Mr. Morris Ploscowe, Chief Clerk of the Court of Special Sessions, who throughout the entire study served as Consultant to the Committee.[1] During the course of the study, the Committee was assisted in the collection and compilation of the data by a project of the Work Projects Administration. Grateful acknowledgement is hereby made for the cooperation received from the Works Project Administration authorities.

It is hoped that the results disclosed herein may shed light upon the subject of sex offenses, furnish a fairly accurate survey of the problems involved, and supply worthwhile suggestions for remedial measures.

WM. R. BAYES,
*Chairman*

[1] The Committee should also like to acknowledge the services of the following members of the staff of the Court of Special Sessions for their assistance in the collection, compilation and analysis of the data: Joseph Aloia, Milton Hartman, Rose Nankin, Charles Walpole, James G. Ward, Benjamin Z. Yolkoff.

## [I. RECOMMENDATIONS.

I. A sexual psychopath law should be enacted which would make t possible to retain convicted sex offenders who are not reasonably safe to be at large, in institutional confinement even after the expiration of sentence. This would make it possible to retain custody over abnormal sex offenders who are neither mentally defective nor insane, but who, because of constitutional penchants for abnormal methods of satisfying sexual passions, are dangerous to be at large. This law could be implemented by a provision requiring psychiatric examination and report on all sex offenders who are sentenced to some form of institutional confinement. If such report definitely shows that these offenders are still dangerous, steps should be taken to have them retained in custody until appropriate medical and psychiatric examinations indicate that they can safely be released.

II. The crimes of impairing the morals of a minor and carnal abuse should be combined into one crime. All sexual tampering with the body of a child and all sexual misbehavior with a child, short of rape or sodomy, should be included in this crime. The new crime could avoid the deficiencies and inconsistencies of present statutes in that

(a) It could make all sexual misbehavior and tampering with children under ten a felony. At the present time, only carnal abuse of a child under ten is a felony (sec. 483-a Penal Law). The impairment of the morals of a minor is now a misdemeanor irrespective of the age of the child:[1]

(b) It would make all persons who misbehave sexually with children guilty of felonies, where they have previously been convicted of similar crimes. At the present time, only the carnal abuse section of the Penal Law has such a provision.[2]

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[1] Mr. Lane has also requested the inclusion of the following statement: "The foregoing Recommendations do not contain any specific recommendations designed to remove the inconsistencies of the present statutes with respect to the age of the child protected or the failure to take into account the age of the offender in differentiating the seriousness of the offenses. (See Finding XIX.) A member of the Committee in a minority report calls the omission to the attention of any committee which may be assigned to draft legislation as the result of this study."

[2] Robert P. Lane, Executive Director of the Welfare Council, has requested that the following statement be made in connection with the above recommendation: "This recommendation follows without comment the age as set in section 483-a Penal Law. The Committee recognizes that many persons concerned with the protection of children against sexual abuse think the age limit is set too low."

III. Medical and psychiatric examinations for all sex offender should be had before sentence. In few crimes is it so necessary t obtain an understanding of the entire personality of the offende before disposition as in sex crimes. A considerable proportion of se offenders are abnormal. The degree of their abnormality and thei dangerousness to the community, as well as their treatment needs, ca be revealed by medical and psychiatric examination. It is highl desirable therefore that facilities be provided so that all offenders con victed of sex crimes be submitted to medical and psychiatric examina tion before sentence. Adequate facilities for psychiatric care an treatment should also be provided for sex offenders after sentenc during the period of their incarceration.

IV. Where the offender is charged with a sex felony, a pre pleading investigation of the circumstances surrounding the offens and the character, personality and prior record of the offender shoul be made before a plea of guilty to a misdemeanor is accepted. Th defendant's consent should be obtained before such investigation i made. If the investigation shows that the offender has an inclinatio to commit sex crimes, or if the facts surrounding the offense do no warrant the relatively lenient treatment inherent in a misdemeano conviction, a plea of guilty to a misdemeanor should not be accepte and the defendant should be ordered to stand trial on the felon indictment.[1]

## III. FINDINGS.

The Committee makes the following findings based on the report appended hereto:

I. There was no wave of sex crime in New York City during the 1930's. Although sex crimes receive more public attention than other types of crime, they represent only a small fraction of the sum total coming to the attention of the Police Department. In particular, prop erty crimes and crimes against the person, such as assaults, are far more numerous than sex crimes.

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[1] Hon. Samuel J. Foley does not wish to be recorded as approving Recommendations I, II and IV, which probably will be the subject of consideration by the New York State District Attorneys Association of which he is a member.

Hon. James M. Barrett does not wish to be recorded as approving Recommendations I, II and IV in the form stated.

II. There was an increase in the number of cases of rape, sodomy, mpairing the morals of a minor, and indecent exposure, which came o the attention of the police in the later years of the 1930's. The ncrease in New York City seemed to be part of a nationwide trend f increase in sex crime.

III. The distribution of sex crimes by county tends to follow opulation lines. Thus, Kings, the most populous county of New York ity, leads other counties in such sex crimes as rape and indecent expo- ure. Other types of crime, such as, crimes against property, do not ollow the population distribution. New York County has many more rrests for crimes against property than the other counties of the city lthough it has approximately one-fourth of the population of the city.

IV. First offenders commit most sex crimes. Of the sex offenders onvicted in the County Courts and the Court of General Sessions, 61% ad no records, as against 39% with records. Offenders charged with ex felonies are less inclined to have records than other types of felons.

V. Where sex offenders do have prior criminal records, it is sually for non-sexual crimes. Of 215 convicted offenders indicted for orcible rape who had prior criminal records, only 14% had records of rrests for prior sex crime, as against 84% with records of arrests for on-sexual crimes.

VI. Sex crime is not habitual behavior for the great majority of onvicted sex offenders. Police Department fingerprint records dis- lose that only 7%, 40 out of 555 offenders convicted in 1930 of sex rimes, were again arrested on charges of sex crime during the period rom 1930 to 1941.

VII. There is no universal type of sex offender. He is drawn rom all age groups and from all social and economic classes.

VIII. Youthful sex offenders, men between the ages of sixteen nd thirty, are the most numerous, accounting for 59% of the total onvicted. Middle aged offenders between the ages of thirty-one and ixty represent 37% of the total. Men in the group over 60 years of ge, were 4% of the total (201).

IX. The crimes of statutory and forcible rape, abduction and eduction, were committed for the most part by younger offenders men under thirty-one years of age). Older offenders were mostly nvolved in the crimes of incest, carnal abuse, impairing the morals of

a minor, sodomy and indecent exposure. The majority of the offender sixty-one years of age and over were implicated in the two crime against children of carnal abuse and impairing the morals of a minor

X. 80% of the convicted offenders were white; 20% were of othe races.

XI. Single men predominated among those convicted of se crimes, accounting for 60% of the offenders. 26% were married at th time of the commission of their sex crimes; and an additional 14% ha been married but were either separated from their wives, divorced o widowed at the time the crime was committed.

XII. Most sex offenders were either native born Americans o born in American possessions. The foreign born accounted for but 27 of the offenders.

XIII. The vast majority of sex offenders were permanent resi dents of the City. Only 2% had been in the City less than one yea

XIV. Academic education is no bar to sex crime. 10% of th offenders had completed their high school education, and an additiona 1% had a college or professional education. Another 9% had attende high school but had not completed their course. Most offenders, how ever, had not advanced beyond an elementary education. Of thes 36% completed their elementary schooling and 44% left school befor graduation.

XV. A study of available cases in the courts indicates that mos sex offenders were employed at the time of the commission of thei crime, and that the employment was for the most part in low incom occupations.

XVI. While no case studies were made of the victims of se offenses, the general impression arising from available cases in court would indicate that most of the female victims involved came from th same low-income groups as the offenders. It may be noted that housin conditions have a bearing upon the commission of sex offenses.

XVII. The victims of sex crimes are of all ages and of bot sexes. Most of the victims of sex felonies in the Court of General Ses sions and the County Courts, however, were females, 63% of thes female victims were over 14 years of age. Male victims who appeare

in the County Courts or General Sessions cases were on the whole much younger than female victims. Two-thirds of the male victims of sex felonies were fourteen years of age or less.

XVIII. Some physical damage to the victim was noted in 1215 of the sex felony cases. In approximately 700 of these 1215 cases coming into the Court of General Sessions or the County Courts, between 1930-9, pregnancy resulted from the sexual assault. Venereal diseases and other injuries were also frequent concomitants of the sex crime.

XIX. The Penal Law provisions relating to sexual tampering with children or otherwise impairing their morals need revision. The various provisions of the Penal Law are not consistent with respect to the age of the child protected. In the crimes of carnal abuse or impairing the morals of a minor, the age limit is sixteen; in the crimes of statutory rape or abduction, the age limit is eighteen. Only in the crime of carnal abuse is there a differentiation in the seriousness of the crime, depending upon the age of the victim. Carnal abuse of a child under ten is a felony, of a child over ten is a misdemeanor. There are no such distinctions in the crime of impairing the morals of a minor, which is a misdemeanor, though the same gross sexual acts may be involved in this crime as in that of carnal abuse. Nor is there any distinction as to the age of the victim in the crime of statutory rape. All sexual intercourse with girls under the age of eighteen is a felony.

Nor does the Penal Law sufficiently take into account the age or character of the offender in differentiating the seriousness of the crimes. Sexual acts between adolescents are placed on a par with sexual assaults by mature men. Only in the crime of carnal abuse is there a distinction in the seriousness of the crime depending upon whether the offender has been convicted for the first time or has been guilty of similar offenses.

The crime of impairing the morals of a minor includes within the same concept, gross sexual acts upon a child as well as minor infractions which have no relation to sex.

XX. The sex crime problem of the Court of General Sessions and the County Courts is not one essentially of the rapist who seeks to impose his will upon a female by force and violence. Nor is it essentially the problem of the sodomist who seeks to satisfy his passion by

non-heterosexual means or by unnatural methods. Illicit intercours between members of the same family, punishable as incest, also play a minor role in the sex problem confronting the courts. Over half t the sex offenders (59%) convicted in the Court of General Session and the County Courts were charged with statutory rape, whic involved a normal act of sexual intercourse with a girl who was unde the statutory age.

XXI. In the Court of General Sessions and the County Courts i the years 1930-9, 3,295 convicted offenders were charged with se felonies. Of this number 1,140 or 35% were convicted of felonies. Th balance, 2,155 or 65% were convicted of misdemeanors, in the statutor rape cases, 1,554 out of 1,948 offenders, or 80%, were convicted of mi demeanors.

XXII. A majority of the sex offenders in the Court of Gener Sessions and the County Courts, (1,891 out of 3,295, or 57%,) we convicted of the misdemeanor of assault in the third degree.

XXIII. In the Court of General Sessions and the County Cour during the years 1930-9, 13% (422 out of 3,295) of the offenders we convicted after trial; whereas 87% (2,873) entered pleas of guilty.

XXIV. In three-fourths of the felony cases where a plea of guil was entered (2,118 or 74%), the plea was to a misdemeanor, 9% the offenders who were tried, were convicted of misdemeanors, t remainder being convicted of felonies.

XXV. The entry of a plea of guilty to a misdemeanor on sex felony charge cuts down the maximum range of punishment for th convicted offender from a possible twenty or ten years to an indeterm nate sentence of three years imprisonment.

XXVI. In the Court of Special Sessions 26% of the impairi morals and 31% of the indecent exposure convictions were the resul of pleas of guilty. In the Court of General Sessions and the Coun Courts the pleas of guilty amounted to 87%.

XXVII. In many of the misdemeanor cases in Special Sessio in which the charge was impairing the morals of a minor, a felo charge for rape, sodomy, carnal abuse or incest might have been mad

XXVIII. Most sex offenders in the Court of General Sessio and the County Courts (64%) were sentenced to some form of instit

tional confinement. The Penitentiary and the State Prison were the two major institutions to which convicted sex offenders were sentenced. Of the convicted offenders in these Courts, 27% were placed on probation and 9% received suspended sentences.

XXIX. Of the offenders indicted for rape in the second degree (statutory rape) half were placed on probation or received a suspended sentence. However, the courts reacted much more vigorously against convicted offenders who had been charged with such crimes as forcible rape, incest, sodomy and carnal abuse.

XXX. In the Court of Special Sessions, 73% of the offenders convicted during 1930-9 of the crime of impairing the morals of a minor were sentenced to some form of institutional confinement, 37% receiving the maximum sentence that could be imposed—an indeterminate sentence up to three years in the New York City Penitentiary. An additional 27% of the offenders were placed on probation or received suspended sentences.

XXXI. The major type of sentence in indecent exposure cases coming before Special Sessions is a term of imprisonment up to six months in the Workhouse or the City Prison. 46% of the offenders convicted of indecent exposure received this type of sentence. An additional 38% were either placed on probation or received a suspended sentence.

XXXII. The age of the victim of the sex crime is a definite factor in determining the sentence imposed on the offender. In general, the younger the victim, the more severe the sentence. Only 12% of the offenders who tampered with children twelve years of age or under were placed on probation or received a suspended sentence, as compared with 42% of those who tampered with older victims.

XXXIII. There is a definite relationship between the age of the offender and the sentence imposed. The younger the offender, the more likely he is to receive probation or a suspended sentence. Conversely, the older the offender, the more likely he is to be sentenced to an institution. 40% of the offenders between 41-50 years of age, for example, were sentenced to State Prison, as compared with only 16% of those between the ages of 16 and 25.

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# REPORT AND ANALYSIS OF SEX CRIMES

*in the*

# CITY OF NEW YORK

for the ten year period

1930-9

*In making the appended Report and Analysis the Committee is indebted to Morris Ploscowe, Chief Clerk of the Court of Special Sessions, who served as Consultant, and to John N. Stanislaus, Probation Officer of the Court of General Sessions, who directed the assembling and analysis of the factual data.—William R. Bayes, Chairman*

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# CHAPTER I.

## THE LAW RELATING TO SEX CRIME.

Nine crimes, namely, (1) forcible rape, (2) statutory rape, (3) carnal abuse, (4) sodomy, (5) incest, (6) abduction, (7) seduction, (8) impairing the morals of a minor, and (9) indecent exposure, were selected for study. They contain those elements of force and violence, fraud and deception, abnormality and perversion, and attacks upon the young of both sexes, which constitute for the public the sex crime problem. It is desirable, before presenting the statistical data on these crimes, to understand their nature as defined by law. Each of these crimes has a popular connotation which in many respects differs from the definitions contained in the penal law. The legal analysis will indicate the specific behavior these crimes involve, the relation of the crimes to each other, and the relative gradations of seriousness in terms of sentences that may be imposed for their commission.

At the outset, we must point out, however, that these nine crimes do not present in the aggregate of their definitions any co-ordinated, well devised scheme of regulating undesirable sex behavior. Each crime has been defined as if no other crime existed. As a recent study by the Law Revision Commission points out, the existing Penal Law deals with "each sexual crime as if it were an independent unit wholly unrelated to the other sex offenses. Therefore it is not surprising to learn that the existing law fails to present a comprehensive and consistent statutory scheme for the control of sex crimes".[1] The inconsistencies and gaps in the existing law are best seen when the definitions of individual crimes are analyzed.

### 1. Forcible Rape or Rape in the First Degree.

Of s crimes studied, rape is the most numerous. But rape is of two gir ; forcible, or rape in the first degree, and statutory, or rape man of nd degree. Of the 3,295 defendants indicted for sex felonies n act of 0-1939 and who were convicted in the County Courts and the lu ighteen ) eneral Sessions, 2,366 were charged with rape. Of this num- Court po ere charged with forcible rape and 1,948 with statutory rape. be 1911)). rapes are therefore far more numerous than forcible rape. st "Th are the definitions of forcible and statutory rape or rape in N of young d second degrees? sent, nor

[1] People v. Law Revision Commission Report, Commmunication and Study Relating to Sexual Crimes

Under early law, forcible violation of the woman's person was an essential element of rape. Rape was, in Blackstone's words, "the carnal knowledge of a woman forcibly and against her will". The modern law recognizes however that in many cases intercourse can be "against the will" of a woman yet not involve force. Moreover there are many cases where there is no real consent by the woman, yet force is absent. Men may have intercourse with women who are intoxicated, unconscious, insane, or so intellectually defective as not to know the nature of the act being performed. Thus the crime of rape in the first degree covers much more than cases in which the resistance of a female is overcome by force. It also includes cases in which the intercourse was had without the conscious and voluntary consent of the female.[1]

Most of the rape first degree charges are made where the defendant is accused of having forcibly overcome the resistance of the woman and has had intercourse with her against her will. The problem of how much resistance a woman must put up against the act of intercourse to eliminate the notion that the intercourse was with her consent is therefore crucial in this type of rape. However, no unvarying criterion of the amount of resistance can be laid down by the law. It must vary with the circumstances of each case. As the Court pointed out in People v. Connor: (126 N. Y. 278, at p. 282)

> "It is quite impossible to lay down any general rule which shall define the exact line of conduct which should be pursued by an assaulted female under all circumstances, as the power and strength of the aggressor, and the physical and mental ability of the female to interpose resistance to the unlawful assault, and the situation of the parties, must vary in each case. What would be the proper measure of resistance in one case would be inapplicable in another situation accompanied by differing circum-

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[1] Section 2010 of the Penal Law defines rape in the first degree as follows:

A person who perpetrates an act of sexual intercourse with a female not his wife, against her will or without her consent; or,

1. When through idiocy, imbecility or any unsoundness of mind, whether permanent, she is incapable of giving consent, or, by reason of mental defect or immaturity, or any bodily ailment, she does not offer resistance; or

2. When her resistance is forcibly overcome; or

3. When her resistance is prevented by fear of immediate and grievous harm she has reasonable cause to believe will be inflicted upon her; or,

4. When her resistance is prevented by stupor, or weakness of mind from any intoxicating, or narcotic, or anaesthetic agent; or, when she is known by him to be in such state of stupor or weakness of mind from any cause; or,

5. When she is, at the time, unconscious of the nature of the act and this is known to the defendant; or when she is in the custody of the law, or of any person lawfully assisting her or a place of lawful detention, temporary or permanent.

Is guilty of rape in the first degree and punishable by imprisonment for not more than twenty years.

stances. One person would be paralyzed by fear and rendered voiceless and helpless by circumstances which would only inspire another with higher courage, and greater strength of will, to resist an assault.''

It must be noted, however, that ''rape is not committed unless the woman opposed the man to the utmost limit of her power. A feigned or passive or perfunctory resistance is not enough. It must be genuine and active and in proportion to the outrage''.[1]

Rape in the first degree is punishable by imprisonment of up to 20 years.

## 2. Statutory Rape or Rape in the Second Degree.

From the standpoint of legal analysis, rape in the second degree presents simpler problems. It is defined in the Penal Law (Sec. 2010) as follows:

''A person who perpetrates an act of sexual intercourse with a female, not his wife, *under the age of eighteen years*, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable with imprisonment for not more than ten years''.

Under this definition any act of sexual intercourse by a man with a girl under the age of eighteen years is rape in the second degree. It is immaterial that the girl consented or was a willing partner to the intercourse. The problem of resistance or lack of resistance so crucial in first degree rape is of no consequence in a charge of second degree rape. It is still rape in the second degree even though the girl under 18 may have been the instigating party and even though she was previously unchaste or appeared to be over the age of eighteen. Nor is any account taken of the relative age of the parties. Intercourse by a boy of 16 with a girl of 17 is as much rape in the second degree as intercourse by a man of 50 with a girl of 17. So long as a boy 16 or over, or a man, has an act of intercourse with a girl not his wife, who was actually under eighteen years of age, he is guilty of rape in the second degree. As the Court pointed out in People v. Marks (146 A. D., 11, 130 N. Y. S. 524 (1911)).

''The manifest purpose of this legislation was to protect the morals of young girls; and to render the enactment effective neither the consent, nor the previous unchastity of the girl, nor her representations

[1] People v. Cary, 223 N. Y. 519.

nor information derived from others as to her age, nor her appearance with respect to age, is a defense to a prosecution, but such facts may doubtless be taken into consideration by the court in passing sentence."

While it is apparent that the object of the rape, second degree, statute is to protect the character and morals of young girls, the precise age at which girls will be protected against themselves has varied from time to time. The first New York statute of 1787, which followed the common law, set the age at which consent was immaterial in a rape charge, at ten years of age.[1] In 1887 the age of consent was raised from ten to sixteen. In 1895 the age of consent was again raised to eighteen years, making, in the words of People v. Marks (supra), "sexual intercourse with a female the day before she attains the age of eighteen years . . . a felony, but it would not be a crime at all . . . in the intercourse took place the day after".

It may be noted that the courts have somewhat blurred the simplicity of the definition of the crime of rape in the second degree. The raising of the age limit under which sexual intercourse with a girl is rape has given the courts some difficulties. Traditionally rape has required resistance and lack of consent on the part of the female. Where the law prohibits all sexual intercourse with a girl below a certain age, it eliminates the requirements of resistance and lack of consent. But the courts apparently feel safer if legal traditions remains unbroken even though they have to resort to fictions to hide the cleavage. Thus in cases of second degree rape, the courts have discussed conclusive presumptions of non-consent and the "law offering resistance for the female". For example, in People v. Gibson, 232 N. Y. 458 (1922), the court stated:

> "With the age of consent fixed at eighteen it may not confidently be stated that all girls under that age do not comprehend what they are doing when they consent to intercourse. The law however deals with all and not with individuals. In law the act of intercourse . . . is without their consent and against their will. The state says that they do not consent or that their apparent consent shall be disregarded. It offers resistance for them. It deals with the case as rape, not as a mere statutory offense".

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[1] The Statute reads as follows:

"That if any person shall unlawfully and carnally know and abuse, any woman child under the age of ten years, every such unlawful and carnal knowledge, shall be deemed and adjudged to be a rape and felony; and every offender, being thereof duly convicted or attained, shall suffer death for the same.

"*And be it further enacted by the authority aforesaid,* That if any person shall by force ravish a married woman, or maid, or any other woman, it shall be deemed and adjudged felony; and every offender being thereof duly convicted or attainted, shall suffer death for the same" (Chap. 23, Laws of 1787).

This statement is an excellent example of legal mumbo jumbo. Actually the legislature has completely eliminated any requirement as to resistance or lack of consent in the case of rape in the second degree where the intercourse was had with a female under the age of eighteen.

The law proscribes not only the act of sexual intercourse in rape but also the preliminary indecent acts and assaults that lead to this crime. It may be noted that there can be no rape unless there is some penetration. In many cases of sex tampering, however, things do not reach this stage. The woman may be able to fight off the man's attack and prevent penetration. Such a man is guilty of either an "attempt to commit rape" or an "assault with intent to commit rape". Where the indecent familiarities are taken with the body of a female child under the age of consent and the attempt is made to have intercourse with her, and the attempt fails, this may also be construed as an attempt to commit rape or an assault with intent to commit rape even though the child consented to these acts. Consent in this type of case is no defense just as it is no defense to a charge of rape in the second degree.[1]

### 3. Carnal Abuse of a Child.

If the purpose of the rape statute is to protect the morals of young girls, then the law must also prohibit "the insidious approach and vile tampering with their persons that primarily undermines the virtue of young girls and eventually destroys it.[2] The legislature has therefore gone further than merely prohibiting the attempt to commit rape or the assault with intent to commit rape. It has specifically provided against indecent advances toward or familiarities with children in three sections of the Penal Law. Sec. 483-a reads:

> "Any person of the age of eighteen years or over who carnally abuses the body, or indulges in any indecent or immoral practices with the sexual parts or organs of a child of the age of ten years or under, shall be guilty of a felony, punishable, on conviction thereof, by imprisonment for not more than ten years."

Under Sec. 483-b of the Penal Law, where the child is between the ages of ten and sixteen years, carnal abuse of the body of the child is

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[1] As the Court stated in Hayes v. People:

"The consent of such an infant being void as to the principal crime it is equally so in respect to the incipient advances of the offender. That the infant consented to or even aided in the prisoner's attempt cannot therefore, as in the case of an adult, be alleged in his favor any more than if he had consummated his purpose." (Hayes v. People, 1 Hill 351 (1841). See also People v. Gibson, supra and People v. Tench, 167 N. Y. 520.)

[2] People v. Verdegreen, 106 Calif. 211, at 214.

punishable as a misdemeanor. If however, the defendant is a recidivist offender, carnal abuse of a child between the ages of ten and sixteen is punishable as a felony; and, as in the case of a child under the age of ten, the maximum term of imprisonment is ten years.[1]

These provisions of the Penal Law proceed upon the notion that the younger the child that is abused, the more heinous the offense. The abuse of children under ten is a felony. Similar acts upon a child over ten years of age is a misdemeanor. Sec. 483-b of the Penal Law also requires a more severe punishment for a recidivist sex offender who tampers with children between the ages of ten and sixteen. Both male and female children under sixteen are covered by the provisions of Sec. 483-a and b of the Penal Law. While a boy cannot be raped, he may be carnally abused.

### 4. Impairing the Morals of a Minor.

Sec. 483 of the Penal Law goes even further than the above two sections in protecting the morals of the young. Under Sec. 483-a or 483-b, "carnal abuse of the body" or "indecent or immoral practices with the sexual parts or organs" are required for a conviction. A child's morals may be impaired or seriously endangered however without any physical touching of the body of the child. The showing to a

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[1] Section 483-b reads as follows:

Sec. 483-b. *Carnal abuse of a child of ten years of age and less than sixteen.*

Any person who carnally abuses the body of a child of the age of ten years and over and less than sixteen years of age, or who indulges in any indecent or immoral practice with the sexual parts or organs of any such child, in a manner other than an act of sexual intercourse, shall be guilty of a misdemeanor, punishable by fine of not more than five hundred dollars or imprisonment for not more than one year, and shall be guilty of a felony, punishable with imprisonment for not more than ten years, where such person has been previously convicted of a similar crime or of the crime of rape in the first degree, rape in the second degree, abduction, sodomy or incest or of the crime of endangering the morals of a child as defined in section four hundred eighty-three of the penal law or of the crime of carnal abuse of a child as defined in section four hundred eighty-three-a of the penal law or of the crime of assault in the second degree with intent to commit the crime of rape, abduction, sodomy, incest or carnal abuse of a child, or where such person has been previously convicted of an attempt to commit any of the aforesaid crimes.

The age limit of sixteen in the carnal abuse statute raises some questions with respect to acts of carnal abuse of girls between the ages of sixteen and eighteen. Since the statute is specifically limited to children under sixteen, the crime of carnal abuse cannot be committed upon a girl over that age. Such acts when committed upon an assenting female between the ages of sixteen and eighteen might however be punished as an assault with intent to commit rape or as an attempt to commit rape. Sec. 483-a also leaves a no man's land for the person just over Children's Court age, namely: between the ages of sixteen and seventeen, who takes indecent familiarities with a child under ten. Below the age of sixteen this may be considered juvenile delinquency, but over the age of sixteen this cannot be punished as carnal abuse. It may however be punished as impairing the morals of a child. Sec. 483-a reads "any person of the age of eighteen years or over, etc." Sec. 483-b reads "any person, etc." See 483 which provides against impairing the morals of a minor, reads "a person, who, etc."

child of an indecent moving picture or indecent photographs or the presence of a child at a place where acts of sexual intercourse are performed would tend to impair the child's morals. The legislature has provided for such situations in Sec. 483 of the Penal Law which reads:

"A person who:

1. Wilfully causes or permits the life or limb of any child actually or apparently under the age of *sixteen* years to be endangered, or its health to be injured, or *its morals to become depraved;* or,

2. Wilfully causes or permits such child to be placed in such a situation or to engage in such an occupation that its life or limb is endangered, or its health is likely to be injured, or *its morals likely to be impaired.*

Is guilty of a misdemeanor.

The most striking thing about Sec. 483 is the generality of its definition. It deals with much more than the morals of a child. It also seeks to protect the "life", "limb" and "health" of the child and prohibits endangering or impairing such "life", "limb" and "health". Even in the field of morals Sec. 483 is not limited to the realm of sex alone. Anything which tends to undermine the general moral character of a child under sixteen is covered by this section. This would go all the way from teaching a child sex perversions to permitting a child under sixteen to play a pin ball or slot machine. How broad the concept of "impairing morals" under Sec. 483 is, may be seen in the case of People v. Stein, 146 N. Y. S. 852, 38 A. L. R. 74 (1913). There the defendant was found guilty of (1) permitting a boy under sixteen years of age to be placed in a situation likely to impair his morals and (2) keeping a room used for gambling. The defendant operated a retail candy store and had on his premises a machine for dispensing gum by chance (gum ball machine). It was possible by playing this machine to obtain five, ten or fifteen cents worth of gum for a penny. The defendant had permitted a boy under sixteen to use this machine. The Appellate Division held that Stein was properly convicted on both counts.

It may be noted that Sec. 483 like Sec. 483-a and 483-b covers both boys and girls under the age of sixteen. The impairment of the morals of a child of sixteen or seventeen is not covered by this section. Thus, unless the indecent advances in the case of a girl

of sixteen or seventeen have gone so far as to constitute an assault with intent to commit rape or an attempted rape they are not punishable. Indecent acts against boys of sixteen or over are only punishable if they constitute a violation of the statute against sodomy or attempted sodomy. It may be noted that violations of Sec. 483 constitute a misdemeanor.

## 5. Indecent Exposure.

Indecent exposure is defined in the Penal Law as follows (Sec. 1140):

> "A person who wilfully and lewdly exposes his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another so to expose himself, is guilty of a misdemeanor."

This crime is one of a number of sections under a general article entitled "Indecency" in the Penal Law. Other sections in this article prohibit immoral plays and exhibitions, the practice of nudism, the sale or distribution of obscene books, papers and prints, the sale or distribution of obscene articles, the keeping of disorderly houses, etc. In this study we are concerned only with the misdemeanor of indecent exposure.

The nude exposure of both men and women is prohibited by Sec. 1140 of the Penal Law quoted above.[1] However, it may be noted that in practically none of the cases which came before the Court of Special Sessions during the ten years 1930-1939 were women charged with this crime.

Three elements must be present to make a defendant guilty of indecent exposure. (1) The exposure must be in a public place; (2) it must be a wilful exposure; (3) it must be an indecent exposure. If any of these elements are lacking the crime is not committed.

## 6. Incest.

Incest is defined by the Penal Law as follows (Sec. 1110):

> "When persons, within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void

[1] See People ex rel. Lee v. Bixby, 67 Barb. 221 (1875). In this case six women were charged with indecent exposure. They had exposed themselves in a house of prostitution to five men for money. The house of prostitution was held to be a public place within the meaning of the statute and the women were held properly convicted of indecent exposure.

intermarry or commit adultery or fornication with each other, each of them is punishable by imprisonment for not more than ten years.''

Marriages are incestuous and void within the meaning of the above section where they are between:

1. An ancestor and a descendant;
2. A brother and sister of either the whole or half blood;
3. An uncle and niece or an aunt and nephew.[1]

Thus the crime of incest is committed when a father and daughter, grandfather and granddaughter, grandmother and grandson, brother and sister, uncle and niece, aunt and nephew *intermarry* or *commit an act of sexual intercourse.*

Incest is a felony under the Penal Law. However, Sec. 5 of the Domestic Relations Law, which prohibits marriages of the above relations, declares that parties entering into such marriages are guilty of a misdemeanor. Thus under the Penal Law a proscribed marriage is a felony. Under the Domestic Relations Law, it is a misdemeanor. In People v. Board, 243 N. Y. 595, 596, the Court stated that the district attorney may in the case of a proscribed marriage prosecute for the felony or the misdemeanor as he chooses. The elements of the crime are the same.

## 7. Sodomy, or ''the Crime Against Nature''.

The Penal Law prohibits certain types of sex conduct which are offensive to public morals and decency. It prohibits first of all any sex relations between human beings and animals or birds. This was known in common law as bestiality. Secondly, it prohibits any but normal relations between men and women by proscribing carnal knowledge ''by the anus or by or with the mouth''. Both the active party and the party submitting to the unnatural intercourse, if the submission is a voluntary one, are punishable. Thirdly, Sec. 690 of the Penal Law prohibits sex relations between persons of the same sex ''by the anus or by or with the mouth''. Here too the active and passive parties are equally guilty. Finally, the practice known to the psychiatrists as necrophilia, which is the attempt to have sexual intercourse with a dead body, is prohibited.

Sodomy is a felony. A person guilty of these practices may be punished by a maximum of twenty years imprisonment.

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[1] Sec. 5 Domestic Relations Law.

## 8. Abduction.

The crime of abduction is so defined by the Penal Law at the present time that one can hardly recognize its early English origins. Apparently one of the easy roads to riches in early England, as in modern America, was to marry an heiress. If her parents did not consent to such marriage or if she was not willing, then an elopement or a kidnapping of the heiress was in order.[1]

A prohibition against this practice may be seen in its modern version in Sec. 70 subd. 3 of the Penal Law, which reads:

> "A person who takes or detains a female unlawfully against her will, with the intent to compel her, by force, menace or duress, to marry him, or to marry any other person, or to be defiled is guilty of abduction."

It is to be noted that this subsection has no limitation as to the age of the woman abducted. It covers both cases of forcible marriage as well as forcible defilement of the female.[2]

How far the New York law has gotten away from the original notion of "stealing an heiress" may be seen in subsection 2 of section 70, which reads:

> "A person who inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse is guilty of abduction."

Like subsection 3, there is no age limit as to the female victim although an earlier version of this statute had an age limit of twenty-five

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[1] This popular practice of "stealing an heiress" was provided against by a statute of 1487, 3 Hen. VII c. 2, which read:

> "It is enacted, that if any person shall for lucre take any woman, being maid, widow or wife, and having substance either in goods or lands, being heir apparent to her ancestors, contrary to her will; and afterwards she is married to such misdoer, or by his consent to another, or defiled; * * *"

Apparently the snatching of heiresses was one of the good old customs which the colonists brought with them from England for a New York statute of 1787 provided:

> "*And whereas women*, as well maidens as widows and wives, having substance, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors for the lucre of such substance, be sometimes taken by misdoers, contrary to their will, and afterwards married to such misdoers, or to others, by their assent, or defiled. For prevention whereof, . . . (Laws of 1787, Chapter 23, 10th Sessions)."

[2] It may be noted however that neither consummation of the marriage nor defilement is necessary so long as the unlawful "taking" or the "detention" was for the purpose of marriage or defilement.

years.[1] The inveigling or enticement must be of an unmarried female of previous chaste character.[2]

Where the woman was previously chaste and she is persuaded by various blandishments or enticed or enveigled into entering a house of prostitution, the person who did the persuading, held out the blandishments, etc., is clearly liable under this section. The real problem in the construction of this section, however, is whether an inveigling or enticing to a single act of intercourse would make a man liable to the penalties of this section.

In People ex rel. Howey v. Warden, 207 N. Y. 354 (1913), the Court of Appeals held that it did not.[3]

The difficulty with the case of People ex rel. Howey is that Sec. 70 (1) of the Penal Law, which has similar language to Sec. 70 (2) is differently construed.

Sec. 70, subd. 1 reads as follows:

A person who:

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, for the purpose of sexual intercourse with any person not her husband, or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage is guilty of abduction.

This section of the statute applies only to girls under 18, whereas subd. 2 has no age limit. In People v. Deckenbrock, 142 N. Y. S. 278,

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[1] Laws of 1848, Chap. 105, p. 118.

[2] The term "previous chaste character" as used in this statute has been defined by the court in Kenyon v. People, 26 N. Y. 203, 207:

> "Character, as here used, means actual personal virtue, and not reputation. The female must be unmarried and chaste in fact, when seduced. By the terms 'chaste character', the legislature could only have meant personal qualities that make up the real character, and not public reputation, which is the estimate of character formed by the public. It could not have been intended to substitute reputation for character in this, its primary and true sense. The accused may, by proof of specific acts of lewdness, on the part of the female, and not otherwise, show that she was in fact unchaste."

Compare Carpenter v. People, 8 Barb. 603 (1850).

[3] The complainant and another young lady accepted an invitation to an automobile ride in the County of Kings with one Wolfe on his representation that they would meet another male friend of the complainant. In place of the expected friend, one Howey was picked up. The young women insisted upon going home but were persuaded to go for a short ride which eventually landed the party in a resort in Queens County where, after considerable drinking and dancing, they started back for Brooklyn. On a pretext that the gas had given out, the complainant and Howey left the car and on an unfrequented road in Queens County, Howey attempted to commit rape on the complainant. Howey was arrested on a Kings County warrant charging him with abduction under Sec. 70 subd. 2 of the Penal Law. He sued out a

(*Continued on following page*)

the Court sustained a conviction of abduction obtained against a hotel clerk who rented a room to two men and two girls under 15. There was no evidence in this case that the girls were prostitutes.

In People v. Smith, 100 N. Y. S. 259 (1906), the defendant was employed in the same store with the complainant, a girl of fourteen. He persuaded the girl to go to Central Park after work and there in a secluded spot had intercourse with her. He was indicted for abduction under Sec. 282 of the Penal Code, which had substantially the same provisions as the present Sec. 70, subd. 1 of the Penal Law. The defendant's conviction was upheld.

It is a little difficult to see why the language "takes, receives, . . . a female under the age of eighteen years, for the purpose of prostitution with any person not her husband; or, for the purpose of sexual intercourse" in Section 70,[1] covers a single act of sexual intercourse whereas the language "inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse" is intended to cover only cases where the inveigling or enticing is for the purpose of prostitution.

It may be noted that not only is the person who takes or detains a female under eighteen for the purpose of prostitution or sexual

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writ of habeas corpus which was granted and sustained by the Court of Appeals on the ground that the crime of abduction charged in the warrant of arrest and in the information, was not committed by him. In the course of its opinion the Court stated:

> "We are all agreed that the evidence produced before the magistrate did not tend to establish the commission by the relator of the crime of abduction as thus charged in the information and specified in the warrant of commitment. We agree that this charge is not supported by evidence of enticing a woman to an unfrequented roadside and there attempting to have a single act of intercourse with her. We do not concur in the proposition which has been urged by the accused that the offense defined by the statute could not be consummated unless the woman was enticed into some resort of ill-fame. To our minds the test of guilt is not necessarily the character of the place to which the woman is taken, but rather whether she is enticed into some place for purposes of common prostitution, as generally understood."

While Judge Bartlett dissented to the granting of the writ of habeas corpus on other grounds, he concurred in the interpretation of Sec. 70, subsection 2, taken by the majority:

> "In the view adopted at the Special Term a charge of abduction under this enactment is not maintainable upon proof of enticing a woman into a lonely field at night for the purpose of a single individual act of sexual intercourse. It was held that the place into which the female is inveigled must to some extent be a place for the purposes of prostitution or assignation, and unless it has been previously so used the offense does not come within the subdivision. I am not inclined to construe subdivision 2 of Section 70 of the Penal Law as narrowly as this. It matters not, in my opinion, what has been the previous character of the place to which the woman is enticed provided the purpose of taking her thither is to compel her to become a prostitute or to have indiscriminate sexual intercourse with men for money."

See also Carpenter v. People, 8 Barb. 603 (1850).

intercourse guilty of abduction, but the parent or guardian of the girl who consents to such taking or abduction is equally guilty. Abduction is punishable by a maximum of ten years imprisonment.

### 9. Seduction.

Seduction is one of the minor crimes considered in this study. During the ten years 1930-1939, only 21 defendants charged with this crime were convicted in the Court of General Sessions or in the County Courts. It is defined by Section 2175 of the Penal Law as follows:

> A person, who under promise of marriage, or by means of a fraudulent representation to her that he is married to her, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars or both.

It may be noted that merely having an act of intercourse with a woman with her consent is not seduction. There must be "the use of some influence, promise, art or other means on the part of the man by which he induces a woman to surrender her chastity and virtue to his embraces".[1] The promise to marry must be an absolute one, not conditioned upon pregnancy or the performance of any other condition.

## THE REQUIREMENTS AS TO "OTHER EVIDENCE".

Traditionally courts have had considerable difficulty with the problem of proof in sex crimes. It was Sir Matthew Hale, who, writing in 1680, stated:

> "It is true rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered that it is an accusation easily to be made and hard to be proved and harder to be defended by the party accused though never so innocent."[2]

The problem of proof in these cases is not very easy of solution. On the one hand there is a decided public interest in the repression of

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[1] People v. Gumaer, 1896 (4 A. D. 412).

[2] History of the Pleas of the Crown, Hale, Volume I, page 635, Edition of 1736.

sex assaults, particularly upon young children. The sense of outrage at the despicable character of these crimes, however, frequently makes impossible any calm consideration of the evidence in these cases. As Hale further pointed out:

> ". . . the heinousness of the offense many times transporting the judge and jury with so much indignation that they are over-hastily carried to the conviction of the person accused thereof by the confident testimony, sometimes of malicious and false witnesses."

Yet calm consideration of the evidence is particularly necessary in sex cases despite the sense of revulsion that these crimes cause. Experience has shown that unfounded complaints of sexual assaults are brought for a variety of motives—for spite or revenge, for purposes of blackmail, as an outgrowth of the psychopathy of the complainant, or merely out of pure fantasy. Unfounded accusations of sexual assaults are particularly apt to come from children.

As one Court pointed out:

"And yet there are instances of accusations by children of innocent men, charging crimes and requiring much cunning and imagination for their fabrication. Innocence is an attribute of childhood. But there are countless instances of children old beyond their years in crime, in wickedness and in cunning."[1]

In order to provide a safeguard against unfounded complaints the law has provided the following requirement of proof in rape cases:

> "No conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence" (Sec. 2013, Penal Law).

Similar evidentiary provisions exist for the crimes of *abduction* and *seduction*. However, there are no such provisions in the law for impairing morals, carnal abuse, sodomy and incest.

The statutes requiring corroboration do not define what is meant by the phrase "other evidence". Because of the infinite variety of circumstances to which the rule must be applied, any rule formulated for the guidance of the courts must be done in general terms. In general the "other evidence" which is required in support of the testimony of the complainant must extend to *every essential element of*

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[1] People v. Donohue, 114 App. Div. 830, 833.

*the crime.* It must tend to corroborate the complainant's testimony as to the material facts constituting the crime and the fact that the crime was committed by the defendant.

It may be noted that the measure of corroboration required in sexual cases is greater than that which is required to support a conviction obtained on a confession or upon the testimony of an accomplice. The requirement as to other evidence respecting confessions is satisfied if the independent proof establishes the fact of the crime, which need not connect or tend to connect the defendant with the crime. In the case of accomplices, the requirement as to additional evidence is satisfied if it tends to connect the defendant with the commission of the crime. In the case of sex cases, however, the supporting evidence must go to every material fact essential to constitute the crime as well as to connect the defendant with it.

The rule as to corroboration has been criticized by Professor Wigmore in his authoritative treatise on the Law of Evidence.[1] Despite his criticisms, it is doubtful whether the legislature would abandon the safeguard of the requirements of "other evidence" in serious sex cases. However the question may well be asked, if the rule is a valuable one for rape cases, abduction cases and seduction cases, why is it not also a useful one in impairing morals, carnal abuse, incest and sodomy cases. In carnal abuse and in impairing morals cases particularly, there is danger that a defendant may be the victim of childish fantasy. Yet, as the rules of evidence stand at the present time, less proof is required in an impairing morals or in a carnal abuse case than is necessary in a case of rape in the second degree. Thus, a Court of Special Sessions trying an impairing morals case may satisfy itself with less proof than a jury in a rape case. Since the problem to be resolved is similar in rape cases as in impairing morals and carnal abuse cases, the quantum

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[1] "The requirement of corroboration leads to many rulings as to sufficiency, based wholly upon the evidence in each case; from these no additional development of principle can profitably be gathered. As recorded precedents of Supreme Courts they are mere useless chaff, ground out by the vain labor of able minds mistaking the true material for their energies." (Wigmore, Evidence (2d Ed. 1923, sec. 2061, p. 367).)

"(1) *Credibility does not depend on numbers of witnesses.*

Therefore:

(2) In general, the testimony of a *single witness*, no matter what the issue or who the person, *may legally suffice as evidence upon which the jury may found a verdict.*

(3) Conversely, *the mere assertion of any witness* does not of itself need to be believed, *even though he is unimpeached* in any manner; because to require such belief would be to give a quantitative and impersonal measure to testimony. . . .

(4) As a corollary of the first proposition, *all rules requiring two witnesses, or a corroboration of one witness,* are exceptions to the general principle." (Wigmore, Evidence (2d Ed. 1923, sec. 2034, p. 308).)

of proof required by the law and the rules of evidence regulating such proof should be the same in all three types of cases. If a safeguard is needed in one situation, it is also needed in the other.

## CONCLUSIONS.

Public opinion is most aroused in sex cases where children are the victims of sex crimes. Every parent is concerned lest his child become a victim of sex tampering with its consequent disastrous effects upon the child's physical and mental health. Yet the law has not sufficiently provided for the cases in which children are the victims of sex crimes. In the first place, the penal law is inconsistent as to the ages within which children may be victims of sex crimes. In carnal abuse or impairing the morals of a minor, the age limit of the victim is sixteen, in statutory rape or abduction (Sec. 70, subd. 1) it is eighteen. Carnal abuse of the body or sexual organs of a child under ten is a felony. If the child is over ten, carnal abuse is a misdemeanor. There are no similar provisions for the crime of impairing the morals of a child. No matter what the age of the child, a defendant convicted of impairing the morals of a minor is guilty of a misdemeanor. Yet men are frequently prosecuted for impairing the morals of a minor who are in fact guilty of statutory rape, sodomy and carnal abuse.

The whole concept of impairing the morals of a minor needs to be re-examined. It covers entirely unrelated types of conduct. Offenders may be prosecuted under Sec. 483 of the Penal Law who physically endanger the child. Sec. 483 also prohibits as we have seen the endangering of the general moral character of a child such as offering him opportunities to gamble his pennies. It likewise may include such gross sexual acts as rape or sodomy. It may be noted that it is grossly unfair to a person under Sec. 483, whose offense had no relation to sex to go through life with a record of impairing the morals of a minor.

It would seem desirable therefore to take out the sex aspects of Sec. 483 and combine it with the crime of carnal abuse. This would make it possible to cover in one crime all sexual tampering with the body of a child and all sexual misbehavior with a child short of rape or sodomy, and all impairment of the morals of a child, of a sexual nature. The new statute would of course eliminate the inconsistencies as to the age of the victim which are found in the present law. The new crime of sexual misbehavior with a child should also carry out the salutary policy of the present carnal abuse sections, namely, the younger

the child the more seriously should the crime be regarded. At the present time, as we have seen under Sec. 483, sex offenders guilty of serious sex misbehavior with very young children may be prosecuted for the misdemeanor of impairing the morals of a minor.

A new statute on sexual offenses against children might also take into account the fact that, by and large, men who tamper sexually with children are mentally abnormal, even though they may not be insane. This is particularly true of the middle-aged and senile offenders. Psychiatric examination of such offenders might therefore be required as a prerequisite to sentence. Such examination may reveal that these offenders will be a constant menace to children and the law should contain the necessary provisions for segregation and custodial care in such cases.

The policy of the law in connection with statutory rape also needs to be re-examined. No account is taken by the rape statute of the age of the offender. In fact the only provision as to the age of the offender in any of the crimes considered above is that in Sec. 483-a of the Penal Law, which makes tampering with the sexual organs of a child under ten, by a person eighteen years of age or over, a felony. Yet there is a wide disparity in social damage and individual perversity between sex intercourse or sex play between boys and girls of similar ages and the same type of acts on the part of mature men and very young girls. As we shall see in our discussion of the sentences imposed in sex crimes, the age of the offender has a definite influence upon the sentence that he receives; the younger the offender, the more apt he is to receive lenient treatment at the hands of the courts. This recognizes the fact that adolescent sex misbehavior is not to be regarded as seriously as sex misbehavior on the part of grown men. The question is whether the application of this social policy should be specifically prescribed by statute or left, as at the present time, to the predilections of the individual judge.

A re-examination of the law relating to sex offenses might also clear up certain anomalies in the present law which were noted above. A person who enters into an incestuous marriage in violation of the law should be guilty of a felony or a misdemeanor. He should not be guilty of both. The abduction statute should apply to individual acts of sex intercourse or to cases of prostitution, or both. It should not apply to one type of sex misconduct in one section and another type in the following section. Finally the whole problem of proof in sex cases needs to be re-examined. Standards of proof in all sex crimes should

be uniform. This would tend to make unnecessary the prosecution of statutory rape cases as cases of impairing the morals of a minor because of lesser standards of proof in the latter crime.

It is evident that the law as to sexual crime is in need of revision. This was recognized by the Law Revision Commission when it made its valuable study on sex crime entitled "Communication and Study Relating to Sexual Crimes". This study should be implemented by formulating the specific statutory changes which are necessary to give this state a rational penal system for the control of sex misbehavior.

# CHAPTER II.

## THE EXTENT OF SEX CRIME IN NEW YORK CITY DURING 1930-1939.

It is difficult to answer questions relating to the incidence and extent of sex crime. We need to know whether sex crimes are increasing or decreasing, the types of sex crimes being committed, the relation between the amount of sex crime and other types of crime, the distribution of sex crimes by counties, etc. Unfortunately, the statistics that we must use to answer such questions are subject to inherent difficulties which cast doubt upon any conclusions that we may draw from them. In criminal statistics today, the basic unit used in measuring the volume of criminality is the crime known to the police. This unit is used by the Federal Bureau of Investigation in the preparation of its Uniform Crime Reports. The "crime known to the police" is a fairly accurate measuring rod in such offenses as crimes against property, where victims of thieves and burglars do not hesitate to report their losses to the police. But in sex crimes the basic difficulty with any official statistics is that victims do not freely come forward and make complaints of the crimes which have been committed against them. Many sex crimes, such as rape in the second degree, are committed with the consent of the victim; and there is no incentive on the part of the victim to complain. Cases of this character will come to light frequently only where pregnancy results from illicit intercourse or where the girl contracts a venereal disease. Even where a victim is inclined to make a complaint, a sense of shame may prevent her from bringing her escapade to the attention of the authorities. In many sex crimes, the victim involved is a small child who does not tell its parents. Where the parents do find out, they often would rather keep silent about the crime than further expose the child to the hardship of repeating the details of the crime to the police, district attorney, grand jury and the courts.

Under these circumstances, it is evident that large numbers of sex crimes are committed which never come to the attention of the authorities. The crimes which are reported to the police represent, therefore, only a portion of those which actually occur, and the persons arrested are only a fraction of the actual number of offenders. How large or small the proportion of crimes known to the police is to the actual total of sex crime or what fraction of all sex offenders are arrested and charged with sex crime, it is impossible to say.

It is also impossible to say whether the same percentage of cases come to light each year. It is evident, therefore, that any conclusions as to the volume and character of sex crime based upon official data are apt *to be erroneous* since they cannot take into account the large number of sex crimes which are committed, but which are not reported.

Although we recognize the inherent limitations of our statistics we believe that the following conclusions for the period of this study, namely; 1930-1939, appear justified:

**I. Sex crimes represent only a small fraction of the crimes reported to the police. The police receive many more complaints of crimes against property and crimes against the person than of sex crimes.**

Murder and holdups excepted, sex crimes are the most headlined. At times this sensationalism is mistaken to signify a crime wave. Overlooked, of course, are certain cold facts. A series of attacks upon women or children often is the work of one person—a one man crime wave. Even when not the work of one person, the occurrence of sex crimes, simultaneously or in close succession, may be coincidental only. The three murders committed by sex offenders in the spring and summer of 1937, culminating in the present inquiry, were essentially of this character. No more were they a crime wave than five, ten, even fifteen cases of smallpox among seven odd million people mean an epidemic. The magnitude and resurgence of crime implied in a wave is not always borne out by cold figures. Arrests for sex crimes average around two to three thousand annually. In a city teeming with people of so many diverse racial origins and which daily attracts transients from everywhere, this scarcely is phenomenal, except, perhaps, phenomenally low.

A reading of the more sensational press might lead one to believe that a major portion of police activity is devoted to the apprehension and repression of sex crime. Actually crimes against property and crimes against the person come to the attention of the police with far greater frequency and take up far more police time than sex crimes. To take 1939 as an example, 822 cases of rape and 981 cases designated as "other sex offenses" came to the attention of the police. This may be compared with 13,254 cases of petit larceny, 3,962 cases of grand larceny, 3,181 cases of burglary, 2,945 cases of felonious assault, and 5,185 cases of 3rd degree assault. *Sex crimes represented only 4% of all serious crimes against the person and against property which came to the attention of the police in 1939.*

**II. There was an increase in the number of rape cases reported to the police in the later years of our study. Similar increases may be noted in such crimes as indecent exposure, impairing the morals of a minor and sodomy.**

That there was an increase in rape cases reported to the police in the later years of the 1930's is evident from Table I.

TABLE I—CASES OF RAPE REPORTED TO THE POLICE DEPARTMENT 1930-1939

| YEAR | NUMBER OF CASES REPORTED | |
|---|---|---|
| 1930 | 740 | Average annual number of cases reported—630 |
| 1931 | 606 | |
| 1932 | 602 | |
| 1933 | 643 | |
| 1934 | 560 | |
| 1935 | 582 | Average annual number of cases reported—731 |
| 1936 | 755 | |
| 1937 | 796 | |
| 1938 | 748 | |
| 1939 | 822 | |
| Total | 6854 | |

This table indicates that the number of rape cases reported dropped from a high of 740 in 1930 to 560 in 1934. The number of cases reported began to climb again in 1935 until the high for the ten years of 822 cases was reached in 1939. In the five years 1930-1934 an annual average of only 630 cases was reported to the police as against an annual average of 731 cases in the five years 1935-1939. Between 1934 and 1939 the statisticians indicate a 46% increase in the cases of rape coming to the attention of the police authorities.

**III. There was an increase in the number of arrests in the later years of our study for the crimes of indecent exposure, impairing the morals of a minor and sodomy.**

Table II presents statistics on arrests during 1930-1939 for indecent exposure, impairing the morals of a minor, and sodomy, three of the major offenses with which this study deals. In this table we have taken arrests as the basis, rather than cases reported, because of the fact that the annual police department reports do not contain data on individual sex crimes reported, other than rape.

It is evident from Table II that there were far more arrests for indecent exposure in 1937-1938-1939 than for any other years studied The increase in arrests is reflected in the increase in the number of arraignments in the Court of Special Sessions for these three years. In 1937, 1938 and 1939, there were 244, 234 and 237 arraignments respectively for indecent exposure as compared with 87, 95, and 83 respectively for the years 1930, 1931 and 1932.

It is only with the year 1936 that the Police Department reports more than 300 arrests for impairing the morals of a minor. In this crime, the yearly average of arrests for 1935-1939 was 344 as compared with 258 for 1930-1934. The rise in the number of arrests for impairing the morals of a minor is reflected in the arraignments in the Court of Special Sessions. Between 1930-1933 the number of arraignments for impairing the morals of a minor averaged only 280 per year. From 1937-1940 the arraignments for impairing the morals of a minor averaged 356 per year. The years of greatest increase were 1937-1938.

The increase in arrests for sodomy is less accentuated but even for this crime the average number of cases in the second half of our ten year study was much greater than the average for the first half; 159 for 1935-1939 as compared with 115 for 1930-1934. It is evident, therefore, that the police have had to deal with many more cases of sex crimes during the later years of our study than during the earlier years.

TABLE II—ARRESTS FOR INDECENT EXPOSURE, IMPAIRING THE MORALS OF A MINOR AND SODOMY

| YEAR | INDECENT EXPOSURE | | IMPAIRING MORALS OF A MINOR | | SODOMY | |
|---|---|---|---|---|---|---|
| 1930 | 283 | Annual | 262 | Annual | 108 | Annual |
| 1931 | 265 | average | 230 | average | 115 | average |
| 1932 | 226 | number of | 252 | number of | 91 | number of |
| 1933 | 312 | arrests | 249 | arrests | 125 | arrests |
| 1934 | 314 | 280 | 296 | 258 | 138 | 115 |
| 1935 | 351 | Annual | 292 | Annual | 130 | Annual |
| 1936 | 277 | average | 338 | average | 182 | average |
| 1937 | 501 | number of | 400 | number of | 156 | number of |
| 1938 | 436 | arrests | 379 | arrests | 186 | arrests |
| 1939 | 458 | 404 | 312 | 344 | 165 | 164 |
| Totals | 3423 | | 3010 | | 1396 | |

It is impossible to determine the extent to which the increases in rape cases reported and the increases in arrests for sex crime represent actual increases in the number of crimes committed. It is probable, of course, that there were more sex crimes committed during the years 1935-1939 than during the earlier years of our study. On the other hand these increases may represent more effective police vigilance and more effective police activity. A more active police force will tend to uncover more crimes and make more arrests. It must be noted, however, that this apparent increase in sex crimes in recent years is not confined to New York City. The Uniform Crime Reports of the F. B. I. point to a nationwide increase in reported rape cases during recent years. This publication compared the number of rape cases coming to the attention of the police in the various parts of the country for the years 1931-1935 and 1936-1940. It came to the conclusion that the yearly average for 1936-1940 was 35.9% higher than the yearly average for 1931-1935.

Thus it may well be that not only was there an increase in sex crime in the latter years of the 1930's in New York City but that this increase was part of a nationwide pattern of increasing sex misbehavior. One can only speculate as to the causes for any such rise in sex crime. Definitive data to explain it cannot be obtained.

## IV. There were more sex cases in Kings County than any other county of the City.

New York City consists of five boroughs or counties. Each of these counties has different characteristics. Each contributes a different total to the city-wide volume of crime. In most categories of crime, especially in property crimes, the most criminal of the five counties of the city is New York County. For example, in 1940 the Court of Special Sessions disposed of 23,743 misdemeanor cases of all varieties. Of this number 12,427 or more than half were from New York County. This County is preeminent in the volume of crime despite the fact that it is not the most populous of the five counties. In terms of population, the counties rank as follows:

| | |
|---|---|
| Brooklyn | 2,698,285 |
| New York | 1,889,924 |
| Bronx | 1,394,711 |
| Queens | 1,297,634 |
| Richmond | 174,441 |

Population is, of course, only one of the factors in the production of crime. New York County's preeminence in crime generally is due to such factors as its tremendous concentration of wealth and opportunities for the commission of crimes, its large amusement area, its large transient population, the large number of department stores, etc.

What is the county situation with respect to sex crime? Is New York County preeminent in this field as it is in other fields of crime? How do the various counties compare in the different types of sex criminality? The basis for an answer to these questions is found in Table III, on defendants convicted of sex crimes in the Court of General Sessions, County Courts, and the Court of Special Sessions, by counties, for the ten years 1930-1939.

TABLE III—CONVICTIONS FOR SEX CRIMES—COURT OF GENERAL SESSIONS, COUNTY COURTS, AND COURT OF SPECIAL SESSIONS BY COUNTIES —1930-1939.

| CRIME | TOTAL | NEW YORK | KINGS | BRONX | QUEENS | RICHMOND |
|---|---|---|---|---|---|---|
| A. FELONY FOR WHICH DEFENDANT WAS ORIGINALLY INDICTED.[1] | | | | | | |
| Abduction ..... | 63 | 17 | 25 | 11 | 9 | 1 |
| Carnal Abuse .... | 333 | 137 | 80 | 67 | 48 | 1 |
| Incest ..... | 98 | 20 | 51 | 10 | 12 | 5 |
| Forcible Rape ... | 418 | 124 | 131 | 77 | 55 | 31 |
| Statutory Rape .. | 1948 | 673 | 929 | 235 | 102 | 9 |
| Seduction ..... | 21 | 5 | 9 | 5 | 1 | 1 |
| Sodomy ..... | 414 | 160 | 136 | 70 | 45 | 3 |
| Total ..... | 3295 | 1136 | 1361 | 475 | 272 | 51 |
| B. MISDEMEANORS. | | | | | | |
| Impairing Morals of a Minor ..... | 1463 | 519 | 515 | 239 | 138 | 52 |
| Indecent Exposure | 1063 | 267 | 540 | 115 | 118 | 23 |
| Total ..... | 2526 | 786 | 1055 | 354 | 256 | 75 |
| Grand Total . | 5821 | 1922 | 2416 | 829 | 528 | 126 |

This table indicates that the most criminal borough so far as sex crimes are concerned is not New York County but the County of Kings.

[1] These are the felonies with which the defendants were originally charged. As we shall see, the crime for which these defendants were convicted are quite different.

There were 2,416 convictions for all categories of sex crimes between 1930-1939 in Kings County as compared with 1922 in New York County. The preeminence of Kings County is particularly marked in the two crimes of statutory rape and indecent exposure.

In the latter crime, there were twice the number of convictions in Kings County than in New York County. It may be noted, however, that New York County leads Kings in the number of convictions for such crimes as carnal abuse, impairing the morals of a minor, and sodomy.

## CONCLUSIONS.

It is evident that the sex crime problem must be viewed in perspective. Such perspective will take into account the following:

1. Although there has been for a long time a persistent and continuing problem of sex crime, the city has not been inundated during the past decade by an unusual number of sex crimes. Measured in terms of magnitude only, the sex crime problem is far less serious than that of property crime or of other serious crimes against the person.

2. In the later 1930's, there was an increase in the number of cases of rape, impairing the morals of a minor, indecent exposure, and sodomy coming to the attention of the authorities. The increase in New York City seems to have been part of a nationwide pattern of increasing sex crime, the causes of which are lost in the mists of speculation. This increase in sex crime, however, highlights the need for more intensive measures to deal with it.

3. The distribution of sex crime by county tends to follow the population distributions more closely than the commission of other types of crime. Sex crime tends to be much more of a neighborhood or community problem than other types of criminality.

# CHAPTER III.

## THE PROCEDURAL DISPOSITION OF SEX FELONIES IN THE COUNTY COURTS AND THE COURT OF GENERAL SESSIONS.

The data in this and other sections of this report are based on information obtained from probation reports on convicted offenders. It should be noted however that a considerable proportion of persons arrested and charged with the commission of sex felonies never reach the Court of General Sessions or the County Courts, which have final jurisdiction over these crimes. The charges against these persons were dismissed either by the Magistrate before whom they were brought or by the grand jury from which an indictment was sought. For example during the years 1930-1939 8,160 defendants came before the Magistrates' Courts on a charge of rape. In 2,726 cases or 33 per cent the defendant was discharged by the magistrate. In the same period 5,585 indictments in rape cases came before the grand juries of the five counties. In 1,922 cases or 34% the grand jury voted no indictment. Even where indictments are voted by the grand jury, a considerable proportion of the defendants in sex cases are not tried for the crime with which they are charged, or, if tried, are not convicted. Of 595 defendants, for example, who came before the Court of General Sessions or the County Courts in 1937-1938, 138 or 23% either were granted dismissals or were acquitted by a jury.[1]

It was impossible, because of the limitations of funds and staff, to make any intensive study of this large percentage of sex cases which ends in discharge of the defendant in the Magistrates' Court, Grand Jury and Trial Court. Thus we have no data as to why such a large proportion of prosecutions for sex crimes begun by the arrest of the offender, are unsuccessful. Our data on felonies for the years 1930-1939 concerns offenders convicted in the County Courts and the Court of General Sessions only.

### 1. Crimes For Which Convicted Offenders Were Indicted.

During the ten years studied, 3,295 defendants charged with abduction, carnal abuse, incest, forcible and statutory rape, seduction, and sodomy were convicted in the County Courts and in the Court of General Sessions of some criminal offense. Of these offenders, 1,948 or 59% were charged with the crime of statutory rape, i. e. sexual

[1] Citizens Committee on the Control of Crime, "The Problem of Sex Offenses in New York City," p. 21.

intercourse with a girl under the statutory age of consent. During the ten years studied, there were only 418 indictments for forcible rape or 13% of the total. Indictments for carnal abuse accounted for 333 offenders or 10% of the total. 414 offenders or 12% were charged with sodomy. Only 182, or 6%, during the ten years, were charged with the crimes of abduction, incest, or seduction. It is evident from these figures that approximately three-fourths of the sex cases in which convictions were obtained in the County Courts and the Court of General Sessions are *rape* cases. In the great majority of these cases, moreover, the element of force is absent. The intercourse which forms the basis of the rape charge, was had with the consent of a girl, under the statutory age.

TABLE IV—CRIMES FOR WHICH CONVICTED SEX OFFENDERS WERE INDICTED 1930-1939.

| CRIME | TOTAL | PER CENT |
|---|---|---|
| Abduction | 63 | 2% |
| Carnal Abuse | 333 | 10% |
| Incest | 98 | 3% |
| Forcible Rape | 418 | 13% |
| Statutory Rape | 1948 | 59% |
| Seduction | 21 | 1% |
| Sodomy | 414 | 12% |
| Total | 3295 | 100% |

Thus it is evident that the sex problem in the higher criminal courts is not one essentially of the brutal attacker who seeks to impose his will by force and violence. Nor is it essentially the problem of the sodomist who seeks to satisfy his passion by non-heterosexual means or by unnatural methods. Illicit intercourse between members of the same family punishable as incest also plays a minor role in the sex problem confronting the courts. *In three out of every five cases, the sex offender fell afoul of the law because of an act of intercourse with a girl who was under age.*

## II. Crimes For Which Defendants Were Actually Convicted.

There is a wide disparity in sex felonies between the crime for which the defendant *was actually indicted* and the *crime for which he was actually convicted.* Defendants in the County Courts and the Court of General Sessions *are not usually convicted of the crime with*

*which they were originally charged in the indictment filed by the grand jury.* Only 710 defendants or *22%* of the total of all sex offenders *were convicted of the offenses charged in the indictment or a lesser degree of the same felony.* An additional 430 defendants or 13% were convicted of a felony other than the one with which they were originally charged. *The great majority of the sex offenders* who passed through the Court of General Sessions or the County Courts during the years 1930-1939, *2,155 or 65%, were not convicted of a felony at all but were convicted of a misdemeanor.*

TABLE V—FELONY AND MISDEMEANOR CONVICTIONS IN GENERAL SESSIONS AND COUNTY COURTS 1930-1939.

| | NUMBER | PER CENT |
|---|---|---|
| Total number of defendants convicted ..... | 3295 | 100% |
| Convicted of Felony charged in Indictment | 590 | 18% |
| Convicted of Lesser Degree of same Felony | 120 | 4% |
| Convicted of a Different Felony ..... | 430 | 13% |
| Total Convicted of a Felony ..... | 1140 | 35% |
| Convicted of a Misdemeanor ..... | 2155 | 65% |

It will be noted that all these offenders were indicted for felonies. Otherwise they would not have been tried in the County Courts and in the Court of General Sessions but rather in the Court of Special Sessions. Yet in two-thirds of the cases, these offenders were convicted of a misdemeanor. The chief importance of this fact lies in the determination of the sentence that might have been and was imposed by the judge. A conviction for a misdemeanor limits the judge's discretion in imposing sentence very considerably. Forcible rape and sodomy are punishable by a maximum of 20 years imprisonment; rape in the second degree, carnal abuse, abduction and incest are punishable by ten year maximums. The maximum punishment for a misdemeanor, however, is an indeterminate sentence to the New York City Penitentiary or Reformatory, under which an offender may serve up to three years. Thus the range of treatment for the sex offender is considerably cut down because of the procedural fact that, although he may have been indicted for a felony, he was convicted of a misdemeanor.

The percentage of cases in which sex felonies were reduced to misdemeanors varies from 26% in incest to 80% of the cases of statutory rape. In the latter crime, *only one defendant in five during the ten years 1930-1939 was convicted of a felony.* Out of 1,948 defendants, 1,554 or 80% were convicted of misdemeanor charges. Even in the

crime of forcible rape, one of the most serious in the law, one-third of the defendants were convicted not of a felony as originally charged in the indictment, but of a misdemeanor.

TABLE VI—CONVICTIONS FOR FELONIES AND MISDEMEANORS BY CRIMES.

| | TOTAL DEFENDANTS | CONVICTED OF FELONY | % | CONVICTED OF MISDEMEANOR | % |
|---|---|---|---|---|---|
| Abduction ..... | 63 | 34 | 54% | 29 | 46% |
| Carnal Abuse ... | 333 | 139 | 42% | 194 | 58% |
| Incest ..... | 98 | 73 | 74% | 25 | 26% |
| Rape, Forcible .. | 418 | 274 | 66% | 144 | 34% |
| Rape, Statutory . | 1948 | 394 | 20% | 1554 | 80% |
| Seduction ..... | 21 | 13 | 62% | 8 | 38% |
| Sodomy ..... | 414 | 213 | 51% | 201 | 49% |
| Totals ..... | 3295 | 1140 | 35% | 2155 | 65% |

In Appendix I will be found a detailed breakdown of crimes for which the 3,295 offenders were convicted. An examination of this Appendix reveals the following facts:

1. In most cases where a defendant is indicted for *one sex felony* and is convicted of an *entirely different felony* than the one originally charged, the conviction is for the *felony of assault in the second degree.* For example in the case of 129 of the 274 defendants charged with forcible rape or attempted rape, who were convicted of a felony, such convictions were for assault in the second degree or attempted assault in the second degree. Similarly, of 394 defendants charged with rape in the second degree, who were convicted of a felony, 148 were convicted of the felony of assault in the second degree or attempted assault.

2. *In most cases where a defendant is convicted of a misdemeanor, the conviction is for assault in the third degree.*

Of the 1948 defendants charged with statutory rape, who were convicted, 1554 were convicted of a misdemeanor; 1529 of these de-

fendants or 98% were convicted of the crime of assault in the third degree. Even in forcible rape, one of the most serious crimes in the penal law, there were 144 misdemeanor convictions, 136 of these being for the crime of assault in the third degree.

3. *In more than half of the convictions during 1930-1939* (1891 out of 3295 or 57%) *a defendant indicted for a sex felony was convicted in the County Courts and in the Court of General Sessions of assault in the third degree, a misdemeanor and not a sex felony.*

4. Of the 194 defendants charged with carnal abuse of a child who were convicted of a misdemeanor and not of a felony, 144 or 74% were convicted of impairing the morals of a minor.

Even in the crime of carnal abuse of a child, however, 49 defendants were convicted of assault in the third degree.

## Methods of Obtaining Convictions.

Most defendants in the County Courts and in the Court of General Sessions who are convicted of sex crime do not stand trial but enter a plea of guilty. For the ten years studied *only 422 of the 3,295 defendants, or 13%, were tried:* 2,873 or 87% pleaded guilty. The tendency to plead guilty is particularly in evidence where the charge was rape in the second degree. Although 1,948 defendants were convicted of this crime during the ten years studied, *only 137 or 7% stood trial.* The remainder, 1,811 or 93%, entered pleas of guilty. Only in forcible rape is there a tendency for an appreciable number of defendants to fight the charges and to stand trial. In that crime one conviction out of three (134 out of 418 or 32%) was obtained as the result of a trial.

Practically all of the 422 defendants indicted for one of the seven felonies studied who elected to stand trial were found guilty of either the felony charged or of a different felony. *Only 37 or 9% were found guilty of a misdemeanor. The reverse is true of the defendants who pleaded guilty.* In three out of four cases (2,118 out of 2,873 or 74%) a defendant who pleaded guilty was permitted to plead to a misdemeanor rather than to a felony. Only 755 of the 2,873 defendants or 26% pleaded guilty to felonies.

## TABLE VII—METHODS OF OBTAINING CONVICTIONS IN THE COURT OF GENERAL SESSIONS AND THE COUNTY COURTS—1930-1939.

### CONVICTIONS BY FELONIES AND MISDEMEANORS.

| | | | |
|---|---|---|---|
| TOTAL CONVICTIONS | | 3295 | |
| | By Trial | 422 | or 13% |
| | By Plea | 2873 | or 87% |
| I. FELONIES | | 1140 | or 35% |
| | By Trial | 385 | or 34% |
| | By Plea | 755 | or 66% |
| II. MISDEMEANORS | | 2155 | or 65% |
| | By Trial | 37 | or 2% |
| | By Plea | 2118 | or 98% |
| III. CONVICTIONS BY TRIAL | | | |
| | Total Trials—422 | | |
| | Convicted of Felonies | 385 | or 91% |
| | Convicted of Misdemeanors | 37 | or 9% |
| IV. CONVICTIONS BY PLEAS | | | |
| | Total Pleas—2873 | | |
| | Pleas to a Felony | 755 | or 26% |
| | Pleas to a Misdemeanor | 2118 | or 74% |

It is evident to one familiar with criminal prosecutions that some element of bargaining between the district attorney and defense counsel must enter into these results. The defendant's counsel must consider that if he compels the district attorney to prove the defendant's guilt at a trial, the defendant may be convicted of a felony. However, there is always the possibility that if the defendant does stand trial, he may be acquitted by a jury even though he may be guilty. The district attorney, on the other hand, before taking a plea of guilty weighs the expense to the state of a jury trial and its uncertainty as to result, against the fact that if he takes a plea it will usually be to a misdemeanor. In most cases where the defendant is guilty, the defendant or his counsel is willing when charged with a sex felony to enter a plea of guilty to a misdemeanor. This is usually accepted by the district attorney and the plea of guilty generally is one of assault in the third degree.

## CONCLUSIONS.

It is evident from our data that the realities of criminal prosecution in the County Courts and the Court of General Sessions modify the categories of crimes and sentences contained in the Penal Law. The Legislature has declared that sexual intercourse with a girl under 18 is rape in the second degree and shall be a felony. Most offenders guilty of this crime, however, enter a plea to assault in the third degree, a misdemeanor and an entirely different crime. To a greater or lesser extent, the same practice of taking pleas of guilty to an entirely different crime of the grade of misdemeanor is employed in the other six crimes of abduction, carnal abuse, incest, forcible rape, sodomy, and seduction. We have noted that this acceptance of pleas to a misdemeanor immediately cuts down the range of punishment or treatment from a possible 20 years or 10 years imprisonment to an indeterminate sentence up to three years in the penitentiary or reformatory. The particular case in which the defendant pleads guilty to a misdemeanor, may, however, require a longer incarceration than three years. The offender may be abnormal. He may have fixed habitual tendencies toward the type of behavior which caused his arrest and apprehension. Yet the acceptance of a plea of guilty to a misdemeanor radically circumscribes the range of possible treatment. The worst aspect of present practice is that an understanding of the defendant's crime, the relation of his personality to that crime, and his potential menace to society can only be had after the plea is accepted and the probation officer makes his pre-sentence investigation and report. Even if this report indicates that the offender is of a type who should not be dealt with as a misdemeanant, the court does not usually set aside the plea of guilty to the misdemeanor and order the defendant to stand trial for the felony for which he was indicted. It is recommended, therefore, that before a plea of guilty be accepted in a case involving a sex felony, the probation officer be required to make a pre-pleading investigation and report. The making of this investigation will require the consent of the defendant, but since it is the defendant who is offering to plead guilty to a misdemeanor, he should be prepared to give his consent. The facts in the pre-pleading probation report will serve as an objective and impartial guide to the judge in making a determination as to whether the plea of guilty to a misdemeanor offered by the defendant should be accepted in the particular case. If the judge accepts the plea.

then the probation report can also serve as a basis for sentence. The same use can be made of this report if the plea is not accepted and the defendant is convicted after trial. Thus the pre-pleading investigation will not throw any undue burdens on the probation department. At the same time it will make possible an informed decision on the vital issue of whether a plea of guilty should be taken to a misdemeanor, where the offender is charged with an indictable felony.

# CHAPTER IV.

## THE PROCEDURAL DISPOSITION OF IMPAIRING MORALS CASES AND INDECENT EXPOSURE CASES IN THE COURT OF SPECIAL SESSIONS.

The problem of disposing of misdemeanor cases in the Court of Special Sessions is much simpler than that of disposing of the indictable felonies in the Court of General Sessions and the County Courts. There is no jury in the Court of Special Sessions. A trial is had by three justices. Thus the item of expense of a jury trial need not enter into the calculations of the district attorney in the case of a misdemeanor triable in Special Sessions. The Court of Special Sessions also has no power to reduce the charge of impairing morals or indecent exposure below that of a misdemeanor. If a plea of guilty is to be entered, it must be a plea to a misdemeanor. Thus a defendant in this court cannot obtain leniency on the plea of guilty through a reduction in the grade of his crime. However, it is a common practice for the Justices, in fixing sentence, to take into account the fact that a defendant pleaded guilty.

In presenting the procedural data on impairing morals and indecent exposure cases in the Court of Special Sessions, *we were able to go farther back in the criminal process than was the case with the indictable sex felonies triable in the Court of General Sessions and the County Courts.* We were able to obtain the data on the disposition of impairing morals and indecent exposure cases from the time of *arraignment* instead of from the time of *conviction* only, as was the case with the indictable sex felonies.

### A. The Cases of Impairing the Morals of a Minor 1930-1939.

In the years 1930-1939 there were 3,047 arraignments throughout the city for the crime of impairing the morals of a minor. In 1584 cases or 52%, the defendant was either acquitted or his case was D.O.R.'d.[1] or some other disposition was had without conviction.

There were convictions either through a plea of guilty or a trial in 1463 cases or 48%. Thus a defendant charged with the crime of impairing the morals of a minor has a little better than even chance of

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[1] Discharge on one's own recognizance. This disposition discharges the bail and usually terminates the prosecution.

escaping conviction, once he has been held for the Court of Special Sessions by the magistrate.[1]

TABLE VIII—DISPOSITION OF IMPAIRING MORALS CASES—BY COUNTIES 1930-1939.

| COUNTY | TOTAL ARRAIGNMENTS | TOTAL CONVICTIONS | PERCENTAGE OF DEFENDANTS CONVICTED |
|---|---|---|---|
| New York | 1029 | 519 | 50% |
| Kings | 1173 | 515 | 44% |
| Bronx | 473 | 239 | 51% |
| Queens | 273 | 138 | 51% |
| Richmond | 99 | 52 | 53% |
| Total | 3047 | 1463 | 48% |

This record of convictions and dispositions other than convictions may be compared with the results of prosecutions for other types of misdemeanors. In the ten years 1930-1939, 223,716 defendants were arraigned in the Court of Special Sessions, charged with various types of misdemeanors. Of these defendants 147,275 or 66% were convicted. In 76,441 cases, or 34%, there was a disposition other than a conviction either through acquittal, D.O.R., dismissal, etc. Thus the average defendant charged with a misdemeanor has only one chance in 3 of escaping conviction as compared with the defendant charged with impairing the morals of a minor, who has a better than even chance of escaping conviction. It is therefore evident that the problem of proof is more complex in cases of impairing the morals of a minor than in other types of misdemeanors.

One of the basic reasons why there are relatively fewer convictions for impairing the morals of a minor is that defendants seldom admit their guilt in the Court of Special Sessions by a plea of guilty. One of the characteristics of defendants in impairing morals cases is their emphatic denial that they have tampered sexually with the complainant, who is frequently a young child. They continue to deny these charges even in the face of conclusive evidence against them and even after they have been sentenced and sent to institutions. In short, defendants charged with impairing the morals of a minor are not inclined to plead guilty.

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[1] There is not much variation in the percentages of convictions obtained in the various counties. Kings County had the lowest percentage of convictions with only 515 out of 1173 arraignments, or 43.8%; Richmond had the highest percentage with 52 out of 99, or 53%.

Of 1463 convictions during the ten years 1930-1939, only 374 or 26% were the result of pleas of guilty. In the indictable sex felonies coming before the Court of General Sessions and the County Courts, as we have seen, 87% of the convictions were the result of guilty pleas.

The behavior of defendants in impairing morals cases differs not only from the behavior of defendants charged with a sex felony but also from that of defendants charged with other types of misdemeanors. Most of the convictions in misdemeanor cases are had on a plea of guilty. For example, during the years 1930-1939, of 147,275 convictions for all types of misdemeanors in the Court of Special Sessions, 111,037 or 75% were pleas of guilty. Thus, three times as many offenders plead guilty in misdemeanors generally in the Court of Special Sessions than where the charge was impairing the morals of a minor.

The fact that only a small percentage of defendants plead guilty in impairing morals cases requires that most of the defendants charged with this crime be tried. Between the years 1930-1939 there were 2208 trials for defendants charged with this crime. This represents 72% of all the defendants arraigned in the Court of Special Sessions on the charge of impairing the morals of a minor. The 2208 trials which were held during this period resulted in 1089 acquittals or 49% and 1119 convictions or 51%. Thus, a defendant charged with impairing the morals of a minor, who stands trial, has an even chance of acquittal.

The question might well be asked, "What was the exact nature of the impairment of morals in the cases of the offenders who were convicted during the years 1930-1939?" We commented in Chapter I on the generality and all-inclusiveness of the definition of the crime of impairing the morals of a minor. We indicated there that activities wholly unrelated to sex may come within the scope of the prohibition of the crime of impairing the morals of a minor. But even where the impairing the morals of a minor is limited to sex cases, it still is likely to cover a wide variety of sex misconduct. This is evident from a glance at the following table as to the specific nature of the offense committed in the impairing morals cases of convicted offenders in the Court of Special Sessions.

TABLE IX—SPECIFIC NATURE OF OFFENSE IN IMPAIRING MORALS CASES.[1]

| | | |
|---|---|---|
| (1) Attempted Intercourse | 322 cases | or 22.7% |
| (2) Intercourse | 226 " | " 15.9% |
| (3) Fondling | 205 " | " 14.4% |

[1] Data procurable in all 1416 convictions studied.

| | | | | |
|---|---|---|---|---|
| (4) | Finger in Female Organs ..... | 163 | " | " 11.5% |
| (5) | Exposure to Female Child ..... | 103 | " | " 7.2% |
| (6) | Masturbation of Offender by Victim .... | 96 | " | " 6.7% |
| (7) | Anal Copulation ..... | 90 | " | " 6.3% |
| (8) | Masturbation of Victim by Offender .... | 69 | " | " 4.8% |
| (9) | Oral Copulation ..... | 57 | " | " 4.0% |
| (10) | Intercourse in Presence of Minor ..... | 38 | " | " 2.6% |
| (11) | Slept in Room with Female Child ..... | 28 | " | " 2.0% |
| (12) | Showed Indecent Pictures to Minor ..... | 6 | " | " } |
| (13) | Used Minor for Prostitution ..... | 2 | " | " } |
| (14) | Permitted Daughter to have Intercourse | 1 | " | " } 1.8% |
| (15) | Medical Instrument in Vagina of Child .. | 1 | " | " } |
| (16) | Unknown ..... | 9 | " | " } |
| | Total ..... | 1416 cases or 100.0% | | |

This table makes it evident that a considerable percentage of the offenders convicted of misdemeanors by the Court of Special Sessions could have been charged with felonies and tried by the County Courts or by the Court of General Sessions. For example, in 226 of the 1,416 cases, or 15.9%, the charge of impairing morals is based on acts of intercourse with girls under sixteen. This is rape in the second degree, which is a felony. In 322 cases, or 22.7%, acts of attempted intercourse were the basis for the alleged impairment. This is attempted rape and is likewise a felony. In 147 cases, or 10.3%, the actual offense was either anal or oral copulation. This is sodomy under the law. In 163 cases, or 11.5%, the actual offense was fingering female organs; and in 69 cases, or 4.8%, the victim was masturbated by the offender. Where the victim was under ten years of age these acts could have been prosecuted as carnal abuse, which is a felony. In a number of cases where intercourse was had, it was with a daughter, a son, etc. This would have made possible a charge of incest.

There was undoubtedly a good reason why the District Attorney or the Grand Jury in the above cases chose to prosecute for the misdemeanor instead of the felony. The lack of corroboration by "other evidence" in some of the cases may have led to the prosecution for the misdemeanor, since this requirement does not exist for the crime of impairing morals. Yet this evidentiary requirement also does not exist for sodomy or incest. Nevertheless, some of the impairing morals cases coming before the Court of Special Sessions were of this character. Whatever the motives for the misdemeanor prosecution, it is evident that the magistrate, the District Attorney, and the Grand Jury determine to a considerable degree the sentence which may be

imposed if the defendant is found guilty, by picking impairing morals as the crime for which the prosecution will be had. The most severe sentence that the Court of Special Sessions can impose on an offender convicted of impairing the morals of a minor is an indeterminate sentence to the penitentiary, the maximum of which is three years imprisonment. The sex felonies, as we have already seen, are punishable by ten and twenty year maximums.

## A. Disposition of Indecent Exposure Cases.

The prosecutions for indecent exposure present a different picture from those for impairing the morals of a minor. A much higher percentage of defendants charged with indecent exposure are convicted. During the ten years 1930 to 1939, there were 1,561 arraignments on charges of indecent exposure. Of this number, 1,063 defendants were convicted, or 68%; and 498 or 32% escaped convictions through acquittal, D.O.R., or other means.

As with the impairing morals cases, the percentage of pleas of guilty is relatively small, as compared with other types of misdemeanor cases or with sex felonies. Of the 1,063 convictions of indecent exposure, only 333 or 31% were the result of pleas of guilty; 730 convictions, or 69%, were obtained after a trial was had. This is another indication of the reluctance of defendants in sex misdemeanors to admit their crimes.

There is, however, a difference in the results of trials in impairing morals cases and the results in indecent exposure cases. Of the 1,031 trials for indecent exposure, 730 or 71% resulted in convictions; only 301 cases, or 29%, resulted in acquittals. The corresponding percentages for impairing morals were 51% convictions and 49% acquittals after trial.

Undoubtedly, one reason for this difference is that in impairing morals cases the principal witness is frequently a child of tender years. Courts are well aware of the unreliability of children's testimony. On the other hand, in indecent exposure cases, the complainant and the principal witness may be either a policeman or a mature woman.[1]

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[1] PROCEDURAL VARIATIONS IN INDECENT EXPOSURE CASES BY COUNTIES:

Some interesting variations appear in the outcome of indecent exposure prosecutions in the various counties. In relation to arraignments, the highest percentage of convictions for this crime was obtained in Kings County where 72% of those charged with indecent exposure

(*Continued on following page*)

## TABLE X—PROCEDURAL DISPOSITION OF INDECENT EXPOSURE CASES—1930-1939.

### 1. *Disposition of Arraignments.*

| | |
|---|---|
| Total Arraignments | 1561—100% |
| Total Convictions | 1063— 68% |
| Acquittals, discharges, other dispositions without conviction | 498— 32% |

### 2. *Convictions by Plea or After Trial.*

| | |
|---|---|
| Total Convictions | 1063—100% |
| Conviction after Trial | 730— 69% |
| Conviction after Plea | 333— 31% |

### 3. *Results of Trials.*

| | |
|---|---|
| Total Number of Trials | 1031—100% |
| Defendants Convicted | 731— 71% |
| Defendants Acquitted | 301— 29% |

## CONCLUSIONS.

The data on impairing the morals of a minor highlight the necessity for new legal provisions in the field of sexual misbehavior with children, which were urged in our first chapter. Abnormal individuals who practice rape and sodomy on small children should not be dealt with as misdemeanants.

The high percentage of failure in impairing morals prosecutions seems to require a re-examination of investigational and prosecutorial methods in this field. It is hardly likely that three out of every four impairing morals complaints are unfounded. Some defendants who are guilty of this crime are undoubtedly escaping conviction because of a failure of proof in the Magistrates' Court or in the Court of Special Sessions. This is especially serious because it is in the impairing morals group that many of the abnormal sex offenders, who have a penchant for sex play with small children, are found. The

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were convicted. This may be compared with 46% of those charged with the crime convicted in Richmond County.

Of those offenders who were tried, however, New York and Kings lead in the percentage convicted. 74% of the defendants tried for indecent exposure in New York and Kings counties were convicted. Richmond is again low, with only 54% convicted of those tried.

PLEAS: In all counties the percentage of pleas of guilty was quite low. In the Bronx they represent only 28% of the arraignments; in Richmond only 4% of the arraigments.

re-examination of investigational and prosecutorial methods would consider the role of the Children's Society in these cases, whether it would not be desirable for the District Attorney's office to take a hand immediately in the investigation of every impairing morals complaint as soon as it is received instead of waiting until the defendant is held for Special Sessions. Careful and thorough investigation by an investigator trained in handling the testimony of child witnesses and fully aware of legal standards of proof would undoubtedly improve the presentation of evidence in the Magistrates' Court and the Court of Special Sessions and make less likely the escape of guilty offenders because of failure of proof. In addition, since sex crimes are not usually committed before eyewitnesses, circumstantial evidence scientifically established is of primary importance in rape and impairing morals cases. In every case in which there has been sex contact between the offender and the victim, careful scientific and microscopic examination of the persons and clothes of the victim and the offender should be had. Such examination is likely either to produce convincing proof of the guilt of the offender or to clear an innocent man of a serious charge, particularly if this examination is made a short time after the crime is committed.[1]

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[1] [illegible]cle by Dwight W. Rife, Scientific Evidence in Rape Cases, 31 Journal of Criminal [illegible].

# CHAPTER V.

## SENTENCES IMPOSED ON CONVICTED SEX OFFENDERS.

### A. Sentences Imposed in the County Courts and the Court of General Sessions.

The seven sex felonies of forcible and statutory rape, abduction, carnal abuse, incest, seduction, and sodomy are among the most serious crimes in the Penal Law. The maximum punishment for forcible rape and sodomy may be 20 years imprisonment, for statutory rape, incest, carnal abuse and abduction 10 years imprisonment. Seduction is punishable by 5 years imprisonment. Between these maximum punishments and the right to place defendants upon probation or suspend sentence, there is room for the exercise of considerable discretion on the part of the judges. However, while the judges have considerable discretion in imposing sentences, this discretion is limited at the outset, as we have seen, by the crime for which the defendant was actually convicted. For example, if a defendant charged with, and indicted for, forcible rape is permitted to plead guilty to assault in the third degree, which is a misdemeanor, the maximum sentence which a judge can impose is an indeterminate term in the New York City Penitentiary, which may mean up to three years imprisonment. The advantages to the defendant of taking a plea to a misdemeanor such as assault in the third degree, therefore, become obvious. A plea to a misdemeanor makes it impossible for a judge to send a defendant to state prison, even though he may feel that such action may be warranted in the case before him.

What then are the actual sentences which have been imposed on convicted offenders in the County Courts and the Court of General Sessions during the years 1930-1939? Table XI gives this information on sentences imposed on convicted sex offenders during the years 1930-1939.

It is evident from this table that sentences to imprisonment accounted for three-fifths of all the convicted offenders. The largest group sent to prison (722 out of 3,295, or 22%) were sentenced to the New York City Penitentiary. An additional 157 or 5% were sentenced to the New York City Reformatory. These were the maximum sentences that could have been imposed on sex offenders convicted of misdemeanors. In 366 cases, or 11%, the sentence imposed was a short term in the city prison or the workhouse. In 633 cases, or 19%, the

court sentenced the offender to state prison. An additional 121 cases, or 4% of the offenders, were sentenced to the Elmira Reformatory, which is an institution for the treatment of offenders convicted of felony between the ages of 18 and 30.

A substantial number of the sex offenders, 890 or 27%, were not sentenced to institutional confinement but were placed on probation by the court. In an additional 306 cases, or 9%, probation supervision was not deemed necessary by the court, the defendants receiving a suspended sentence. In only 67 cases or 2% did the court feel that the defendant was defective enough mentally to warrant a commitment to Napanoch.

TABLE XI—SENTENCES IMPOSED ON CONVICTED OFFENDERS—COUNTY COURTS, 1930-1939.

| SENTENCE | TOTAL | PER CENT |
|---|---|---|
| Suspended Sentence (No Probation) | 306 | 9% |
| Probation | 890 | 27% |
| Workhouse, City Prison or County Jail | 365 | 11% |
| Penitentiary | 722 | 22% |
| City Reformatory | 157 | 5% |
| State Prison | 633 | 19% |
| Elmira Reformatory | 121 | 4% |
| Napanoch | 67 | 2% |
| Other Commitments | 34 | 1% |
| Totals | 3295 | 100% |

Table XII presents the data on the sentences imposed in relation to the crime for which the defendant was originally indicted. This table indicates that probation or a suspended sentence was most likely to be used in statutory rape cases. Half of the offenders (984 out of 1,948, or 50%) receive this form of treatment. On the other hand, the courts reacted most strongly against offenders accused of incest, forcible rape, and sodomy, since 59%, 38%, and 35% respectively of the offenders charged with these three crimes were sentenced to state prison. It is interesting to note, however, that more offenders charged with carnal abuse were sentenced to some form of institutional confinement than any other crime. Only 25 out of 333 offenders, or 7%, charged with carnal abuse received a suspended sentence or were placed on probation. Practically all other offenders charged with carnal abuse (304 out of 333) were sentenced to the workhouse, penitentiary, reformatory or state prison. In forcible rape, to take another

serious crime as an illustration, 84 out of 418 convicted offenders, or 20%, were placed on probation or received a suspended sentence and 332 offenders, or 80%, were sentenced to some form of institutional confinement. The New York City Penitentiary was a major institution to which offenders indicted for carnal abuse were sentenced. In 146 of the 333 cases, or 43%, the defendants were sentenced to this institution.

TABLE XII—SENTENCES IMPOSED IN THE COURT OF GENERAL SESSIONS AND THE COUNTY COURTS BY CRIME—1930-1939.

| CRIME | TOTAL | S. S. (NO PROBATION) | PROBATION | WORKHOUSE | PENITENTIARY | N. Y. C. REFORMATORY | STATE PRISON | ELMIRA | NAPANOCH | OTHERS |
|---|---|---|---|---|---|---|---|---|---|---|
| FELONIES, | | | | | | | | | | |
| Abduction ..... | 63 | 4 | 18 | 6 | 10 | .. | 22 | 2 | .. | 1 |
| Carnal Abuse .. | 333 | 16 | 9 | 39 | 146 | 10 | 84 | 3 | 22 | 4 |
| Incest ..... | 98 | 3 | 10 | 1 | 16 | 5 | 58 | 2 | 3 | .. |
| Forcible Rape.. | 418 | 44 | 40 | 33 | 63 | 22 | 160 | 41 | 9 | 6 |
| Statutory Rape. | 1948 | 223 | 761 | 252 | 360 | 105 | 161 | 54 | 16 | 16 |
| Seduction ..... | 21 | 3 | 11 | 1 | 1 | 1 | 3 | .. | .. | 1 |
| Sodomy ..... | 414 | 13 | 41 | 33 | 126 | 14 | 145 | 19 | 17 | 6 |
| Totals ..... | 3295 | 306 | 890 | 365 | 722 | 157 | 633 | 121 | 67 | 34 |

**B. Sentences in Impairing Morals and Indecent Exposure Cases—Court of Special Sessions 1930-1939.**

No other misdemeanor is punishable as severely as impairing the morals of a minor. During the ten years 1930 to 1939, of 1416 offenders sentenced for this crime, 531 or 37% were sentenced to the penitentiary, the maximum punishment that could be inflicted by the Court of Special Sessions. In the crime of larceny to take a typical Special Sessions misdemeanor, for example, only 7% of the defendants sentenced by the Court in the year 1940 were sent to the penitentiary (163 out of 2,422). Of the offenders sentenced for impairing morals between 1930 and 1939, 27% (380 out of 1416) were sent to the workhouse for varying periods up to one year. 43 offenders or 3% were sentenced to the New York City Reformatory. 22 offenders or 1.5% were sentenced to Napanoch (an institution for mental defectives

10 offenders or .7% were sentenced to vocational institutions. 207 of the offenders or 15% were placed on probation and an additional 174 or 12% of the offenders received a straight suspended sentence or received a suspended sentence. The sentence of imprisonment, therefore, either for a definite time or for an indefinite period in the penitentiary up to three years, is the major form of treatment of offenders convicted of impairing the morals of a minor.

The major type of sentence in indecent exposure cases is sentence of imprisonment to the workhouse. Of 998 convicted defendants, 463 or 46% received this type of sentence. This is a term of imprisonment up to one year. In 200 cases, or 20% of those convicted of indecent exposure, the defendants either received a straight suspended sentence or were sentenced to imprisonment with the execution of the sentence suspended. In 183 cases, or 18%, the defendants were placed on probation. Thus in 38% of the cases of convicted offenders, the Court took no punitive action and relied, either on the rehabilitative processes of probation or the warning implicit in the suspended sentence. In 106 cases or 11% of those in which convictions were had the defendants were sentenced to the penitentiary. This is the maximum penalty that could have been imposed for indecent exposure.

## Age of the Victim in Relation to the Sentence Imposed.

It may be expected that the younger the child the more serious the view the court is liable to take of the crime. Is this expectation reflected in the sentences imposed by the Court? In other words, has the age of the victim any influence upon the sentence imposed on convicted sex offenders? An analysis of the statistics of sentences in relation to the age of the victims indicates that the answer must be in the affirmative.

TABLE XIII—SENTENCES IMPOSED ON CONVICTED SEX OFFENDERS IN RELATION TO AGE OF VICTIMS—COURT OF GENERAL SESSIONS AND THE COUNTY COURTS—1930-1939.

| | S. S. NO. PROBA. | PROBA. | WORKHOUSE CITY PRISON | PEN. | N. Y. C. REF. | STATE PRISON | ELMIRA REF. |
|---|---|---|---|---|---|---|---|
| Percentage of victims 12 years or under | 5% | 7% | 9% | 36% | 4% | 28% | 2% |
| Percentage of victims over 12 years of age | 10% | 32% | 12% | 19% | 5% | 17% | 4% |

It is evident from this table that offenders who tamper with younger children are less likely to receive leniency in the form of probation or a suspended sentence. Only 12% of the offenders whose victims were 12 years of age or under were placed on probation or received a suspended sentence as against 42% whose victims were over 12 years of age. Conversely 70% of the offenders who tampered with children under 12 were sentenced to State Prison, Elmira Reformatory, New York City Reformatory or the New York City Penitentiary as against 45% who committed offenses against children over that age.

Similar results follow when the data from the Court of Special Sessions is examined. Of those offenders who were convicted of impairing the morals of children 12 years or under 42% were sent to the penitentiary and 21% were placed on probation as compared with 30% sent to the penitentiary and 36% placed on probation in the case of offenders who tampered with children between 12 and 16.

## Age of the Offender in Relation to the Sentence Imposed.

That there is a close relationship between the age of the offender and the sentence imposed in sex cases is evident from Table XIV.

This table clearly indicates that the younger the convicted offender the greater the likelihood that the court will try the more lenient rehabilitative devices of a suspended sentence or probation. Conversely the older the offender the more likely he is to be dealt with severely by being sent to State Prison. Of the offenders between 16 and 20, 53% were placed on probation, as compared with 10% of those between 40 to 50 years of age. Conversely 40% of those between 40 to 50 years were sent to State Prison as compared with only 4% of those between the ages of 16 to 20 and 12% of those between 21 and 25.

TABLE XIV—AGE OF OFFENDER IN RELATION TO SENTENCE IN COURT OF GENERAL SESSIONS AND COUNTY COURTS—1930-1939.

| | 16-20 | 21-25 | 26-30 | 31-40 | 41-50 | OVER 50 |
|---|---|---|---|---|---|---|
| Percentage of offenders receiving a S. S. or Probation ..... | 53% | 43% | 30% | 18% | 10% | 11% |
| Percentage of offenders sentenced to State Prison ..... | 4% | 12% | 29% | 34% | 40% | 36% |

Similar data as to the influence of the age of the offender upon the sentence imposed may be obtained from the Court of Special Sessions.

Of 374 defendants who were placed on probation or who received a suspended sentence in impairing morals cases, 189 or 50% were between the ages of 16 to 25, and 54 or 15% were over 45 years of age.

## CONCLUSIONS

Within the framework of the present procedural system which permits felons to take pleas to misdemeanors or to be prosecuted for misdemeanors, the Courts appear on the whole to be doing a fairly satisfactory job. In sentencing sex offenders they seem to be making the discriminations and distinctions which need to be made in dealing with sex offenders. Offenders who commit sex crimes of the nuisance variety, such as indecent exposure, are being less harshly dealt with than offenders whose crimes involve a greater social menace. Similarly offenders guilty of normal acts of intercourse, as in statutory rape, were more leniently dealt with than offenders whose crimes tended toward sexual abnormality or violence, such as, carnal abuse, sodomy, incest, or forcible rape. Younger offenders who offer greater rehabilitative possibilities, and whose crimes border on adolescent sex experimentation, were more leniently dealt with than older offenders, whose sex crimes may be the expression of deep seated sex perversion. Finally the youth of the victim was one of the factors taken into account by the Courts in sentencing offenders; the younger and more helpless the victim, the greater was the likelihood of a severe penalty.

The Courts however were handicapped in dealing with abnormal sex offenders, particularly those convicted of misdemeanors, who were neither mentally defective nor insane. A defendant charged with sex crime and who was found to be insane could be sent to the Matteawan State Hospital. He could be retained at this institution even after the expiration of any sentence that may have been imposed upon him unless the Superintendent felt that "he was reasonably safe to be at large".[1] Similar provisions exist for mentally defective offenders sent to Napanoch.[2]

Thus when mental defective or insane offenders are still dangerous and are not "reasonably safe to be at large", they may be held at these institutions. No comparable provisions of law exist for the abnormal sex offender who is neither mentally defective nor insane, but who be-

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[1] Sec. 409 Correction Law.

[2] Sec. 441 Correction Law.

cause of his abnormality and the perverse methods used to satisfy his sexual desires may not be "reasonably safe to be at large". As we have seen, large numbers of sex offenders are sentenced for misdemeanors. Many abnormal offenders are undoubtedly included in this group. Yet even if they receive the maximum sentence for a misdemeanor, three years of imprisonment in the penitentiary, they may still be a considerable social menace and not "be reasonably safe to be at large". This is particularly true of the older offender who has a penchant for homosexual acts with young boys or the offender whose declining sex powers causes him to seek very young girls to satisfy his passions.

This would indicate that this state needs a law for abnormal sex offenders convicted of a felony or misdemeanor, which would make it possible to retain them beyond the expiration of any term which may have been imposed by the Courts, if they were not "reasonably safe to be at large". Such a sexual psychopathic law has already been enacted in a number of states, such as, Minnesota and Illinois.

# CHAPTER VI.

## THE VICTIM OF SEX OFFENDERS.

The sex offender is no respecter of sex or age. Boys as well as girls may be the victims of sex crimes. Boys, of course, can not be raped but they may be the victims of carnal abuse or of sodomistic acts. Their morals may also be impaired by other means. This explains the large number of males among the victims of sex crimes. Of 3,250 victims of sex crimes who appeared in the County Courts or the Court of General Sessions, during the years 1930-9 404 or 12.4% were male and 2,846 or 87.6% were female.

Neither tender years nor advanced age is a protection against the sex offender. Persons from 2 to 80 may be the victims of sex crime. Of the 3,250 victims of sex crimes, 142 or 4% were 6 years of age or under. One female child who was the victim of a sex crime was only 2 years old. The majority of the female victims who came into the County Courts or the Court of General Sessions, however, were over 14 years of age. Of 2,846 female victims of sex offenses, 1,798 or 63% were over 14 years of age. A much smaller proportion of male victims was over 14. Only 133 of 404 male victims, or 33%, were over 14 years of age. In ⅔ of the cases of sex crime at the felony level in which male victims were involved in 1930-1939, the boy was 14 years of age or under.

The crime of sodomy prohibits homosexual practices between persons of the same sex. There is no limitation in the statute as to the age of the homosexual partner. All such practices, irrespective of the age of the parties, are prohibited. It is well known that homosexual practices among men are fairly common, particularly in certain vocational and social circles. It is evident from the above figures as to the ages of victims of sex crimes that cases of sodomy in which the sodomistic partner was an adult rarely come into our courts. Of the 404 male victims of sex crime only 35 or 8.6% were 18 years of age or over. Sodomy between adults, therefore, rarely receives any police attention. Only when children or young adolescents are involved in sodomistic acts does the case come into the courts.

It may be noted, however, that one form of male homosexual activity does receive considerable police attention, namely, solicitation by male homosexuals and male prostitutes. These cases come into the Magistrates' Courts frequently as disorderly conduct, usually of the

degeneracy category. Between 1930-9, 5,991 male defendants were arraigned in the Magistrates' Courts on this charge.

One of the questions which a good probation report must answer is, what were the effects of the sex crime upon the victim. Clearly the probation officer can only furnish objective physical data in answer to this question, such as, whether the victim was injured in the course of the sex crime, did pregancy occur, or did the victim contract venereal disease as a result of the sexual connection with the offender. The probation officer can not probe the deeper emotional effects and physical damage to the victim which the sex crime may have caused and which may persist long after the injuries have been healed or the venereal disease cured. The probation officer is not a psychiatrist. Even if he were, he could not make a complete report of the mental damage which a sex offense may have caused. This may lie hidden under the surface of conscious mental life and may take a long time to develop and reveal its disastrous effects.

Limited to physical factors only, it is significant that in two-fifths of the cases on which we have this information (1,187 out of 2,956), some physical damage to the victim was apparent. In over half of the 1,187 cases in which physical effects were noticeable (641), pregnancy resulted from the sex crime. In an additional 56 cases not only was there pregnancy, but there was also some form of injury or venereal disease. In 311 cases the victim of the sex crime suffered a physical injury. Where the victim was brutally overpowered, as in the forcible rape cases, the injuries are likely to be quite serious. In a number of cases, death resulted from the attack. In one General Sessions' case in which the defendant attempted to rape Miss B, the probation report carries the notation, "As a result of the attack Miss B became seriously ill and emotionally depressed and finally committed suicide". Another case which involved the breaking into an apartment by a drunken defendant and an attempt to rape a 10 year old girl, the probation report reads, "As a result of this occurrence, the 10 year old girl underwent a severe nervous shock". In this case the father was also seriously injured in his attempt to protect the child. In a third case, where an attempt was made to rape an adult woman, Miss W, the latter "had to be taken to the Psychiatric Division of Bellevue".

In 164 cases of the 1187 in which some effects were noticeable upon the victim, the victim contracted a venereal disease as a result of the sex crime. In another 15 cases, the victim was injured in other ways, as well as being infected with venereal disease.

## Table XV—Effects Upon Victims.[1]

| | |
|---|---|
| No Effects | 1769 |
| Injuries Only | 311 |
| Disease Only | 164 |
| Pregnancy Only | 641 |
| Injuries and Disease | 15 |
| Injuries and Pregnancy | 21 |
| Disease and Pregnancy | 29 |
| Injuries, Disease and Pregnancy | 6 |
| Total | 2956 |

These facts clearly indicate that the effects of a sex crime go far beyond the immediate act of intercourse or the indecent act which is the subject of the criminal proceeding. The effects upon the victim may be devastating particularly in cases where force is used. Even where the victim consented and there were no physical injuries, pregnancy and disease are fairly common concomitants of sex crimes. No child could be more unwanted than one which is a by-product of a rape. Yet in approximately 700 cases between 1930-9, the girl, her family and society had to reckon with the problem of what to do with such offspring. Long after the defendant may have expiated his crime, therefore, the people of this city may still be confronted with its by-products.

Generally sex crimes are committed by single individuals upon solitary victims. However, the same victim may be used by a number of different offenders. In 456 instances of the 3295 cases on which we have this information, two or more offenders were concerned in the sex crime against the same victim. In six cases more than five offenders were involved with the same victim. This situation, where a number of different offenders are concerned in the same sex crime, may have much more serious social consequence than cases in which a single offender is involved with a single victim. The possibilities of injury to the victim and transmission of venereal disease are greater. Moreover should pregnancy result from the illicit intercourse, it becomes next to impossible to determine the paternity of the child.

[1] Data procurable in 2956 of 3295 cases.

TABLE XVI—NUMBER OF CONVICTED OFFENDERS—SAME VICTIM.

| | |
|---|---|
| One offender | 2839 |
| Two offenders | 243 |
| Three offenders | 118 |
| Four offenders | 43 |
| Five offenders | 46 |
| More than five offenders | 6 |
| Total | 3295 |

In some cases the offender is not satisfied with one victim but uses number of different victims to satisfy his passions. In 76 out of the ,295 cases, two or more victims were used by the same offender. Here gain the social damage because of the increased possibilities of preg- ancy, disease and injuries are obviously greater than in the case when ne victim is used.

TABLE XVII—NUMBER OF VICTIMS—SAME OFFENDER.

| | |
|---|---|
| One victim | 3219 |
| Two victims | 67 |
| Three victims | 7 |
| Four victims | 1 |
| Five victims | 1 |
| Total | 3295 |

## Place of Occurrence of Sex Crime.

The automobile has been blamed for much of sex crime as well as ny other ills of our present social order. A glance at Table XVII dicates, however, that the automobile was infrequently chosen as the ne of the sex crime. In only 246 of the 3,256 cases on which we have rmation, is the automobile the locus of the sex crime. Occasionally, o, one hears complaints as to lack of police protection in parks. The ssibility of sex assaults occurring in parks is used as an argument additional protection. But the park was the scene of the crime in y 115 of the 3,256 cases during the ten years 1930-9. In over ⅓ of cases (1,101 out of 3,256) the sex crime took place at the offender's ce of residence. In an additional 1,313 cases the scene of the crime s in some other building or some location, such as, a hallway, store, ar, or theatre. In 367 cases the sex offense occurred in the victim's

own place of residence. This is an indication that parents should be more careful in leaving their children unattended in the home. In another 99 cases, the sex offense occurred on the street.

TABLE XVIII—PLACE OF OCCURRENCE OF SEX CRIME.[1]

| | |
|---|---|
| Street | 99 |
| Victim's place of residence | 367 |
| Offender's place of residence | 1101 |
| Building other than offender's place of residence | 869 |
| Parks | 115 |
| Trains, trolleys, buses or stations | 15 |
| Autos | 246 |
| Other locations (hallways, stores, cellars, theatres, etc.) | 444 |
| Total | 3256 |

We had no facilities for making any case studies of the victims of sex crimes. Yet such a study is desirable. In most sex crimes, the fact that a particular girl is a victim of a sex assault is no accident. Generally there is to be found something in the personality, the environmental background, or the family situation of the victim of the sex crime, which predisposes her to participation in sex delinquency. In the statutory rape cases, for example, it is evident from a reading of the probation reports that most of the girls involved come from the same low income groups of the community, the same disorganized neighborhoods, and the same type of disorganized families as the offenders. This is illustrated by the following extracts from two probation reports:

The defendant perpetrated an act of sexual intercourse upon Lucille Reilly, then aged 15 years, who became pregnant. Lucille's father had deserted her mother and was living with a mistress for the previous eleven years. Lucille had lived with her father and the mistress. The defendant is single, 20 years old. At the age of four his father deserted his mother and his mother alone supported the four children of the family.

Evelyn is attending public school. Her father was shot to death in 1933. She and her mother are being supported by the Board of Child Welfare. She is a disciplinary problem in school and was a truant on the date of the offense occurred. Her older sister has a long record of prostitution. Prior to his death her father was co-

[1] Data procurable in 3256 of 3295 cases.

habiting with a mistress. Her brother is in Elmira Reformatory for sodomy. A sister is in Wassaic. John, an illegitimate child of Evelyn's mother, is also in Wassaic.

The defendant is eighteen years old and single. He had a poor school record and was three years retarded. He was transferred to a probationary school and finally enrolled in the C.C.C. The defendant's father deserted his family when the defendant was one year of age and he was reared by his mother. He is the youngest of three children. He was living with his mother at the time of the offense.

## CONCLUSIONS

One does not need to labor the argument that sex offenses may have serious social consequences. Pregnancy, physical injuries, disease, mental shock, and ruined lives may result from sex crimes. It would be unwise to throw the blame for all these consequences solely upon the offender. Neglect of parents in supervising the activities of their children is partially responsible. Homes where one or both parents are immoral or indifferent to ethical or religious principles or addicted to alcoholism or to continual conflict, and which make the street the only refuge for the child, are contributing factors to the participation of children in sex delinquency. Moreover where children must live in congested crowded quarters and are witnesses of sex acts, where families must take in boarders in order to supplement their income, there is some likelihood that these children will become the victims of sex crimes. Similarly where both parents work to maintain the home, there is a minimum supervision of the child's free time. If, then, there are no opportunities for the constructive use of leisure time in the neighborhood in which the child lives, the spare time of the child is likely to be occupied with unwholesome activities. The stage is set for the child to become a victim of sex crime.

It is evident that the problem of preventing children from becoming the victims of sex offenders is not a very simple one. It reaches deep into our family, religious, and ethical life as well as into the social, economic, and community organization of our city.

# CHAPTER VII.

## THE OFFENDERS.

A statistical study at best is but a snapshot picture of any offender. This is especially true of the sex offender, since his personal make-up contains the real clue to his crime. Statistically portrayed characteristics are merely surface indications of personality. Without them, however, we can have no index of differences and similarities among sex delinquents and differences and similarities between sex offenders and other offenders. The failure to recognize that such differences exist, misleads some into regarding all sex offenders as similar in type and further still, to propose an over-all cure for sex crime.

A factual picture of the sex offender is furnished by statistical findings. In the light of these, the average offender is less than thirty years old. More often than not, he is white, native born, and a permanent resident of this city. He is usually unmarried, literate and has had some elementary education. When employed, and a goodly proportion of such offenders are, it is apt to be in an unskilled occupation. Economically, he is in the low income group, and, when unemployed, depends upon his kin or is the recipient of public relief. Ordinarily, he resides with his kin, but when he does not do so, he lives in a furnished room or low priced hotel. Either or both his parents usually are foreign born.

The environment in which he and many like him mature and move, cannot, of course, be detailed in a statistical table. Case histories of probation departments, however, supply the major details. Invariably, these build up into a background of social disorder. It often begins in a broken home. It continues throughout an unsupervised childhood when, instead of being given a key to correct conduct, some offenders are given a key to the street. There they acquire their first and faulty knowledge of sex. Seldom, if at all, did parent or school instruct them in the proper meaning of sex.

A typical instance is the case of Melvin D. Accused of raping a fourteen year old girl, D., only three years her senior, appeared in the Court of General Sessions. The Probation Department case history describes him as wholly unaware of the social significance of his conduct. The improper concepts he had formed about sexual matters were attributed to the absence alike of any moral training and sex education. Blame for this was attached to his parents who had made no attempt

either to inform themselves about his activities or to give him any constructive supervision during his adolescence.

The interest in sex so inauspiciously begun in childhood is accentuated by adolescence and street companionships. It remains the most sustained, and as evidenced by their crimes, the most predominant interest in their lives. The unnatural practices of some offenders apparently started with adolescent curiosity. Economic motives led others into homosexual associations. As case histories confirm, this situation is not uncommon among youths. At times it even culminates in larceny, robbery or extortion.

The economic element has other implications. Apparently, it deprives some of steady companionship with a girl. It is one of the controlling factors in the attitude of many towards marriage. It definitely determines living conditions, especially overcrowding within the home, to the exclusion of decency and morality. The significance of the economic factor, however, can be overstressed. With any social misfit, it may be one among many causal factors, or, simply, an effect of other more deep-seated causes. Whatever role it plays, it cannot fully explain personality, the core of the problem of why offenders behave as they do.

The moral atmosphere in which offenders live, similarly, has some bearing upon their behavior. Religio-ethical considerations, particularly as a motivating force, have had little, if any influence upon their lives. A majority claim affiliation with the major religious groups, but usually it is such in name only. The essential thing about most offenders is the absence of a constructive cast in their careers.

Case histories disclose more about offender personalities than statistics ever could. *The foremost fact is that sex offenders form no set type, physically or mentally.* Comparatively few differ from the general run of delinquents in mentality. Usually, they are of average intelligence. Many sex delinquents, however, manifest all the earmarks of personal inferiority and inadequacy. As a rule, there is nothing brutish about them externally. The sex offender is not a bulging-eyed, dishevelled creature, more ape than man. The reverse is nearer the typical picture, if there be any. The aggressive in manner and appearance are less common than the self-conscious. Many shrink from all contacts in a shame-faced, evasive way. In their flight from reality, they have converged upon themselves. This kind, especially, will seldom face the facts of their behavior. Characteristically, they project blame for their own conduct upon others, notably the victim.

The latter tendency often militates against psychiatric probing into their inner nature. Introverted offenders, in particular, never reveal themselves fully. The psychiatric picture, of these, in consequence, is usually incomplete. Particularly so, when they are otherwise normal mentally and physically. The result is that some psychiatrists weave about such a person purely conceptual findings as to his behavior.

The only salient characteristic most offenders share is lack of normal inhibitions. Any volitional control many may have once had over their sexual impulses, has broken down. In a few, the sex habit has hardened into a fixed pattern, thereby minimizing the chances of successfully uprooting it. The abnormal offender bears this out, though his sex behavior may well have been determined biologically.

Enough has been stated to show the many angles from which sex offenders must be viewed. Personality and social background, as we have seen, are of primary importance. For knowledge of these, individual case study is a prerequisite. Out of such studies by probation departments, the data for statistical findings are derived. The items selected are basic ones common to all offenders.

The foremost is age, which among sex offenders has the greatest significance in relation to the number and the nature of their crimes. Marital status likewise has a bearing, in that most offenders are unmarried. The same with nativity, in so far as it dispels any misconception that the foreign born are primarily to blame for sex crime. Residence in New York City has a similar implication. The transient, perhaps more numerous here than in other American cities, sometimes is suspected of an undue share of sex crimes. The findings indicate otherwise.

Race was found to be relatively unimportant. Illiteracy, as the statistics indicate, is virtually non-existent. In education, occupation, economic status, and living conditions, sex offenders were found to differ but little from other delinquents. The particulars, and their relation to sex crime, are described in the sections that follow.

## The Sex of Offenders.

Practically all of the sex crimes studied were committed by males. Exclusion of prostitutes and stag show performers eliminated all but a few females. Fifty-one females only were charged with the crimes considered in this survey. Of these, 41 were charged with impairing morals, 3 with sodomy, 2 with abduction, 2 with forcible and 1 with statutory rape.

The female offenders invariably had a male accomplice. Either they had intercourse with him in the presence of a child, abetted him in raping another female, or performed an act of sodomy. One sodomy case involved women alone. Several convicted of impairing morals were prostitutes who had intercourse with minors. Other women so convicted had allowed men to indulge in intercourse with a female child.

With one exception, all female offenders were white. They ranged from 18 to 50 years in age, a majority being less than 31 years old. In this respect they resembled male offenders, most of them also being under thirty-one. Only twelve women were over 40 years of age. Nearly all the female delinquents appear to have been immoral previously, and a number were of low mentality.

## The Age of Offenders.

Young and old alike commit sex crimes. In number and nature, however, the crimes differ according to the offender's age. The youngest offenders are the most numerous, fifty-nine per cent being between the ages of 16-30 years of age. The mature offenders, between the ages of 31-60 represent 37% of the total. The senile offender group, consisting of men over 61, is the smallest numerically, consisting of only 4% of the offenders; but, as we shall see, this is one of the most unpromising groups from the standpoint of treatment.

TABLE XIX—CONVICTIONS FOR SEX CRIMES BY AGE GROUPS.

| TOTAL OFFENDERS, 5660 | | | | PER CENT, 100 | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 16-20 | 21-25 | 26-30 | 31-35 | 36-40 | 41-45 | 46-50 | 51-55 | 56-60 | 61 AND OVER |
| 1353 | 1159 | 847 | 606 | 496 | 362 | 307 | 200 | 129 | 201 |
| 24% | 20% | 15% | 11% | 9% | 6% | 5% | 4% | 2% | 4% |

The crimes of the various age groups form a rough, though not uniformly consistent pattern. The more natural and violent crimes are usually typical of younger offenders. Unnatural crimes such as carnal abuse, incest and sodomy are more typical of the older offenders. Four of the seven indictable crimes considered, namely, abduction and seduction, forcible and statutory rape, principally involved men under thirty-one. Men over that age were chiefly responsible for the other three crimes, carnal abuse, incest, and sodomy, as well as the two misdemeanors of impairing morals and indecent exposure.

TABLE XX—CRIMES OF OLDER AND YOUNGER OFFENDERS.

| CRIME | TOTAL CONVICTIONS | OFFENDERS UNDER 31 NUMBER | OFFENDERS UNDER 31 PER CENT | OFFENDERS OVER 31 NUMBER | OFFENDERS OVER 31 PER CENT |
|---|---|---|---|---|---|
| (A) *Indictable Crimes.* | | | | | |
| Abduction ..... | 63 | 50 | 80 | 13 | 20 |
| Carnal Abuse ..... | 332 | 116 | 35 | 216 | 65 |
| Incest ..... | 98 | 29 | 30 | 69 | 70 |
| Rape—Forcible ... | 418 | 340 | 80 | 78 | 20 |
| Rape—Statutory .. | 1948 | 1611 | 83 | 337 | 17 |
| Seduction ..... | 21 | 17 | 81 | 4 | 19 |
| Sodomy ..... | 410 | 180 | 44 | 230 | 56 |
| (B) *Misdemeanors.* | | | | | |
| Impairing Morals . | 1395 | 583 | 41 | 812 | 59 |
| Indecent Exposure | 975 | 433 | 44 | 542 | 56 |
| Total ..... | 5660 | 3359 | 60% | 2301 | 40% |

**Offenders 16-30 Years of Age.**

A detailed breakdown of crimes by age groups reveals some unexpected but not inexplicable results. The preponderantly adolescent group, those between 16-20 years of age, led in the percentage of cases of statutory rape and was second in the percentage of forcible rape, seduction, and sodomy cases. This group also had a high percentage of incest and impairing morals cases. The next adolescent group, those between 21-25 years old led in the percentage of forcible rape and seduction cases and was second in statutory rape and abduction. This group also had a high percentage of indecent exposure cases. The 26-30 year old group had a higher percentage of indecent exposure cases than the other two groups, otherwise its crime pattern followed the 21-25 group, with the exception that it had more sodomy cases than the 21-25 group and fewer forcible rape cases.

The high percentages of young offenders between the ages of 16-20, who were convicted of such sex crimes as rape, both forcible and statutory, impairing morals, sodomy, and incest is a matter of grave concern. It must be noted, however, that the predominance of the youthful offender in crime is not limited to sex, but is characteristic of many crimes. The crime problem is all too intimately tied up with the problems of youth. Secondly, so far as sex crime is concerned, it

must be recognized that youth, both in the adolescent and immediately succeeding phases of development, is pre-eminently the period of greatest sex curiosity and activity. In some individuals, these reach a feverish pitch, and may partly explain the peak rate among young offenders for statutory rape. In essence, this is but promiscuity. In such cases the young offenders and the victim usually are somewhat akin in age. Nor is the victim always a victim in any but a legal sense. Cases are not uncommon in which the girl apparently was the instigator or the more sophisticated in sexual matters. Similarly, many of the impairing morals cases frequently involved adolescent experimentation and sex play with girls of not too disparate ages.

The incest cases involving young offenders are obviously brother and sister situations. Each case, however, differs too essentially, to make generalization possible. Whether the answer to such cases is propinquity, unfavorable family background, over-crowded living conditions, or adolescent sex curiosity is speculative. It is also a little difficult to explain the high sodomy rate for young offenders. This may represent an adolescent urge for experimentation and hence be transient. It may also be symptomatic of deep-seated homosexual tendencies. The particular explanation must be sought in each individual case. The statistics at least signify an unmistakable, and, from a social point of view, a disturbing trend.

The more disturbing, in fact, since degenerate practices often date from childhood. An example is Robert Doe, whose homosexual tendencies were linked with anti-social behavior. In his twenty-third year, he came before the Court of General Sessions on a sodomy charge, involving a fifteen year old boy. The latter also represented a serious behavior situation, resulting partly from an unfavorable social background.

The Probation Department's case study traces D's degeneracy to the onset of adolescence. At that time he was in an orphanage where other inmates initiated him into homosexual practices. After his release from the orphanage, he became an idler, refused to work and continued his degenerate practices. Such behavior resulted in his being adjudged delinquent by the Children's Court. He was committed to a correctional institution, where he was an active sex pervert. Subsequently, he escaped from the institution. Apprehended shortly thereafter, he was then placed in an institution for defective delinquents. It was subsequent to his discharge therefrom that he was indicted on the sodomy charge.

## Offenders 31-45 Years of Age.

The demarcation between the youthful and the mature offender begins with those 31 years and over. The individual over thirty presumably has attained full mental and emotional maturity. Organically his development has ceased. It can even be assumed that more men of this age and upwards are married than those under thirty. From a phycho-sexual standpoint, marriage should mean sexual stability for most. This, however, is qualified by the fact that many individuals over thirty are unmarried and that some of the married ones are maladjusted sexually. Both types are sufficiently numerous to produce their proportional share, if not a greater number of sex offenders. In both groups there are of course those, who, even as adolescents, were deviates.

Offenders from 30 to 45 can be conveniently grouped because of their smaller number and the morphological changes that generally begin about the forty-fifth year or thereafter. Approximately one-fourth of those studied, 1,464 or 26%, were in this middle group. As a whole, it was responsible for forty-six per cent of the incest, thirty per cent of the sodomy, forty per cent of the indecent exposure, thirty-four per cent of the impairing morals and thirty-one per cent of the carnal abuse charges. These, it will be noted, are either unnatural crimes, or suggestive of abnormality in the offender. The crimes for which the group's percentages are lowest, are the more natural ones. Thus but eighteen per cent of abduction, sixteen per cent of forcible rape, thirteen per cent of statutory rape and fourteen per cent of seduction cases involved men from 31 to 45 years of age. In order of frequency, the crimes they committed are impairing morals, indecent exposure, statutory rape, sodomy, carnal abuse, forcible rape, and incest.

TABLE XXI—CRIMES OF OFFENDERS FROM 31 TO 45 YEARS OF AGE.

| | NUMBER | PER CENT OF CONVICTIONS |
|---|---|---|
| Abduction | 12 | 19 |
| Carnal Abuse | 104 | 31 |
| Impairing Morals | 466 | 34 |
| Incest | 45 | 46 |
| Indecent Exposure | 383 | 40 |
| Rape—Forcible | 68 | 16 |
| Rape—Statutory | 251 | 13 |
| Seduction | 3 | 14 |
| Sodomy | 132 | 30 |
| Totals | 1464 | 26% |

## Offenders 46-60 Years of Age.

The third broad age group embraces offenders from 46 to 60, roughly the period of evolutional change. At the upper end, it also includes the prematurely senile. There were 636 offenders, or 11% of the total, who were between 46-60 years of age. This is less than half of the preceding age group. Noteworthy is the fact that slightly more than half the charges against the offenders between 46-60 were for carnal abuse and impairing morals. More than one-third of the remainder were for indecent exposure. It is not unlikely that decreased sexual potency, among other factors is responsible for these crimes. Many offenders probably never developed sexually beyond the infantile stage. Observation of this offender type also reveals a high percentage of inadequate and inferior personalities.

TABLE XXII—CRIMES OF OFFENDERS FROM 46 TO 60 YEARS OF AGE.

| | NUMBER | PER CENT OF TOTAL CONVICTIONS |
|---|---|---|
| Abduction | 0 | 0 |
| Carnal Abuse | 76 | 22 |
| Impairing Morals | 256 | 19 |
| Incest | 22 | 22 |
| Indecent Exposure | 131 | 13 |
| Rape—Forcible | 10 | 4 |
| Rape—Statutory | 74 | 3 |
| Seduction | 1 | 5 |
| Sodomy | 66 | 10 |
| Totals | 636 | 11% |

## Offenders Over 60 Years of Age.

The senile group, comprising those over sixty years of age, totaled 201 offenders, or four per cent of all convicted. They account for eleven per cent of the carnal abuse, eight per cent of the sodomy and three per cent of the indecent exposure charges. No senile offender was indicted for abduction or forcible rape, though twelve offenders were charged with statutory rape. The majority, 126 of the 201, were implicated in the two crimes against children, carnal abuse and impairing morals. Thirty-two were charged with sodomy and 28 with indecent exposure.

The necessity for considering crime in relation to age is best evidenced in the senile offender. As Dr. Ira Wile stated:

> "The gross changes in behavior due to the general degenerative or particular arteriosclerotic factors accompanying senility, with or without impotency, offer insight into activities at this age period that would otherwise escape attention." [1]

Violent crimes are rare with the senile offender. Almost exclusively, the senile offender centers his activities upon child victims. He, above all, is one type of offender who, both for his own benefit and community protection requires permanent custodial care. This is illustrated by the case of Emil D. After pleading guilty to carnal abuse, he was subjected to social investigation by the probation department. It was found that he had initiated two eight year old boys into sexual malpractices, first arousing their curiosity by showing them obscene pictures. Admittedly, he had engaged in acts of sodomy with other young boys. He exhibited indices of degenerative and deteriorative processes. Neighbors and others who knew him regarded him merely as a quiet and unobtrusive old man. Outside his work, his sole interest was the satisfaction of his homosexual inclinations.

TABLE XXIII—CRIMES OF THE SENILE OR OFFENDERS OVER 60.

| | NUMBER | PER CENT OF CONVICTIONS |
|---|---|---|
| Abduction | 1 | 0 |
| Carnal Abuse | 36 | 11 |
| Impairing Morals | 90 | 7 |
| Incest | 2 | 2 |
| Indecent Exposure | 28 | 3 |
| Rape—Statutory | 12 | 1 |
| Sodomy | 32 | 8 |
| Totals | 201 | 4% |

In sum, the age findings stress the importance of viewing the sex offender in other than a purely legal light. His crime cannot be disassociated entirely from his psycho-sexual condition, no more than from his social situation. The total personality of the offender must be the

[1] Ira S. Wile, M.D., Sex Offenders and Sex Offenses, Classification and Treatment. The Journal of Criminal Psychopathology, Vol. III, No. 1, pp. 11-31, July, 1941.

focal point, alike for diagnosis and treatment. Only as these enter into each individual case can we grapple realistically with the problem as a whole.

## Racial Characteristics.

More whites are convicted of sex crimes than persons of all other races combined. The trend differs, however, from that of the city's population as a whole. White males over 14 years of age number 2,819,572 or 94% and non-whites 175,157 or 6% of the city's population according to the latest census returns.[1] White males convicted of sex crimes totaled 80% of those for whom racial data were contained in the source materials. Non-white offenders (including 35 of the yellow and red races) constituted 20%.[2] Compared with the general population figures, white offenders are thus seen to represent 16% of the white males 14 years of age and over and the non-white offenders 63% of the non-white population of the same age levels.

TABLE XXIV—RACE OF CONVICTED MALE OFFENDERS.

| | |
|---|---|
| White | 4504 or 80% |
| Non-white | 1110 or 20% |
| Total | 5614 or 100% |

TABLE XXI—CRIMES OF OFFENDERS BY RACE.[3]

| | TOTAL | WHITE | | NON WHITE | |
|---|---|---|---|---|---|
| | | NUMBER | PER CENT | NUMBER | PER CENT |
| Abduction | 63 | 53 | 84% | 11 | 16% |
| Carnal Abuse | 333 | 292 | 88% | 41 | 12% |
| Impairing Morals | 1395 | 1242 | 89% | 153 | 11% |
| Incest | 98 | 88 | 90% | 10 | 10% |
| Indecent Exposure | 975 | 860 | 88% | 115 | 12% |
| Rape—Forcible | 418 | 357 | 85% | 61 | 15% |
| Rape—Statutory | 1948 | 1317 | 68% | 631 | 32% |
| Seduction | 21 | 18 | 86% | 3 | 14% |
| Sodomy | 414 | 328 | 79% | 86 | 21% |
| Total | 5665 | 4555 | 80% | 1110 | 20% |

[1] U. S. Department of Commerce, Bureau of the Census, Sixteenth Census of the United States, 1940. Series P5, No. 12, p. 2.

[2] The racial item was unobtainable in only 44 cases.

[3] Includes the 51 female offenders.

## Marital Status.

The unmarried offender outnumbers all others. Few offenders are widowed. Fewer still are divorced. Married men, whose number may seem high, actually constituted but twenty-six per cent of the 5,192 whose marital status was indicated in case records. The number of separated offenders is comparatively small, as the following table reveals:

TABLE XXV—MARITAL STATUS OF CONVICTED OFFENDERS.

| | | | |
|---|---|---|---|
| Single | 3142 | or 60 | per cent. |
| Married | 1375 | or 26 | per cent. |
| Separated | 402 | or 8 | per cent. |
| Widowded | 191 | or 3 | per cent. |
| Divorced | 82 | or 2 | per cent. |
| Total | 5192 | or 100 | per cent.[1] |

The crimes committed by the different marital groups are revealing. Notably, those involving married men. More of the latter were convicted of impairing morals than any other crime. The selections of a child victim, which this crime and carnal abuse implies, is significant. Equally so, is the implication alike of sex and familial maladjustment. The number of married men convicted of indecent exposure also is noteworthy. As is to be expected, they account for most of the incest cases.

Men separated from their wives tend mostly to such crimes as statutory rape, impairing morals and carnal abuse. The widowed, who presumably are older men show a high frequency rate for impairing morals, with statutory rape and indecent exposure next in order. Both the separated and the widowed groups reflect the same tendency as married offenders to select child victims. The comparatively few divorced men were charged principally with statutory rape, impairing morals, carnal abuse and indecent exposure.

## Nativity of Offender.

The foreign born are the least responsible for sex crimes. Most offenders are first generation Americans. Inclusive of those born in United States possessions, the American born constitute 73 per cent of all whose birthplace was given in case histories.[1] Only 1,524 offenders or 27 per cent were born in other countries.

[1] Marital status was procurable in all but 517 cases.

TABLE XXVI—NATIVITY OF OFFENDERS.

| | | |
|---|---|---|
| Natives of the United States and U. S. Possessions.... | 4106 or | 73% |
| Natives of other countries..... | 1524 or | 27% |
| Total ..... | 5630 or | 100% |

Natives of the United States proper numbered 3,847 or 94 per cent of the American born. The fact that a majority were first generation Americans is indicated by the number whose parents were foreign born, 2,262.[2] Offenders who originated in United States possessions totaled 259, or six per cent of the American group. The majority of offenders from our possessions were Porto Ricans, 227 in all, or eighty-seven per cent. Filipinos were next in order, though the percentage of such, 5 per cent, is relatively small. Individuals from the Canal Zone, the Virgin Islands and Alaska were negligible in number.

TABLE XXVII—NATIVITY OF OFFENDERS—UNITED STATES AND UNITED STATES POSSESSIONS.

NATIVES OF UNITED STATES AND POSSESSIONS.

| | | |
|---|---|---|
| United States ..... | 3847 or | 94% |
| Possessions ..... | 259 or | 6% |
| Total .....4106 or | | 100% |

NATIVES OF UNITED STATES POSSESSIONS.

| | | |
|---|---|---|
| Puerto Rico ..... | 227 or | 87% |
| Philippine Islands ..... | 13 or | 5% |
| Virgin Islands ..... | 12 or | 5% |
| Canal Zone ..... | 5 or | 2% |
| Alaska ..... | 2 or | 1% |
| Total ..... | 259 or | 100%[3] |

The majority of the foreign born came from thirteen different countries. These accounted for 82 per cent of the non-American offenders. The remaining 18 per cent came from 36 different countries, principally European. Only nine Asiatics, seven from China and two from India, were convicted of sex crimes. The subjoined table gives the thirteen principal countries of offender origin.

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[1] Nativity data were indicated in all but 79 cases.
[2] Parental nativity data were procurable in 4261 out of 5709 cases.
[3] The nativity of offenders was indicated in all but 79 cases.

TABLE XXVIII—PRINCIPAL COUNTRIES OF FOREIGN OFFENDER ORIGIN.

| | | | |
|---|---|---|---|
| Italy | 477 | or | 38% |
| Germany | 121 | or | 10% |
| Russia | 93 | or | 7% |
| Poland | 76 | or | 6% |
| British West Indies | 72 | or | 6% |
| Ireland | 66 | or | 5% |
| Austria | 62 | or | 5% |
| Scandinavian Countries | 57 | or | 5% |
| Greece | 55 | or | 4% |
| Great Britain | 48 | or | 4% |
| Canada | 46 | or | 4% |
| South American Countries | 45 | or | 4% |
| Spain | 23 | or | 2% |
| Total | 1241 | or | 100% |

Only six offenders from American possessions or foreign countries were recent arrivals in the United States. Ninety-one per cent of all convicted persons resided in the United States for more than ten years, indicating that the foreign born are mostly permanent residents.

As eighty-six per cent of all convicted offenders were citizens, it is also evident that most of the foreign born were also naturalized Americans.

## Residential Status.

Blame for the city's sex crimes rests squarely upon the shoulders of its own citizens. Transients and the migratory play but a minor role. Only 86, or two per cent of the 5,108 whose tenure of residence was given, had been here less than a year. Those in the city from one to five years numbered 554; those from six to ten years, 589. Contrasted with these are 3,879, or seventy-six per cent, resident here for at least eleven years.

TABLE XXIX—RESIDENCE IN NEW YORK CITY OF SEX OFFENDERS.

| | | | |
|---|---|---|---|
| Less than One Year | 86 | or | 2% |
| One to Five Years | 554 | or | 11% |
| Six to Ten Years | 589 | or | 11% |
| Eleven or More Years | 3879 | or | 76% |
| Total | 5108 | or | 100%[1] |

[1] Information about residence was present in all but 601 of the 5709 cases examined.

Attacks on women and children often are identified in the popular mind with homeless vagrants. The numerical facts are otherwise. Out of 4854 convicted offenders whose mode of living was recorded, 39 only had no home. Less than one-third, actually twenty-nine per cent, lived alone. The proportion, when related to the number of separated, divorced, widowed, and the older single offenders, is smaller than might be expected.

TABLE XXX—PLACE OF RESIDENCE OF CONVICTED OFFENDERS.

| | | |
|---|---|---|
| Homeless | 39 or | 2% |
| Residing Alone | 1484 or | 30% |
| Residing with Relatives | 3310 or | 67% |
| In U. S. Army or Navy | 21 or | 1%[2] |
| Total | 4854 or | 100% |

Actually, two-thirds of the convicted offender population reside with kinsfolk. Normal living conditions, therefore, are not so unusual among sex offenders as might be supposed. Neither is the suspicion that sometimes attaches to men in military or naval service, founded in fact. Only twenty-one offenders were in the army, navy, or marine corps when convicted of a sex crime. These, too, among 5709 convicted offenders.

## Education.

The average offender may have primitive concepts about sex, but he is not an illiterate. Nor is he without some, albeit an incomplete, education. In fact, the better educated the individual, the less likely he is to be a convicted sex offender. How much more potent education might prove in sex crime prevention, if it included sex instruction and religio-ethical training, could not be ascertained from the source materials.

All but 235, or four per cent of the 5352 whose ability to read and write was reported, were literate. Case histories in General Sessions and the County Courts gave the most complete data and hence were utilized for the educational findings. The table that follows summarizes them.

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[2] Information about place of residence was contained in 4854 out of 5709 cases.

TABLE XXXI—EDUCATION OF CONVICTED OFFENDERS.

| | |
|---|---|
| **ELEMENTARY.** | |
| Complete | 1132 |
| Incomplete | 1397 |
| **SECONDARY.** | |
| Complete | 304 |
| Incomplete | 282 |
| **COLEGIATE AND PROFESSIONAL.** | |
| Total | 47 |

Most offenders, it will be observed, had only an incomplete elementary education. The number who completed their elementary schooling, however, is comparatively high. Once the secondary level is reached, the number of offenders begins to decline. Significantly, though, a higher proportion of the offenders with secondary education finished high school than had completed their elementary schooling.

One per cent only of the convicted offender group whose educational attainments were noted, had received collegiate, professional or technical training. The fact remains, however, that advanced education was no barrier to their commission of sex crimes.

## Economic Status.

The frequently voiced belief that much sex criminalism results from unemployment is not borne out by the convicted offenders. While not complete for all, employment information was contained in 4,920 case histories. The sizable majority these represent gives adequate validity to the findings.

Comparatively few offenders were unemployed. Those convicted in General Sessions and the County Courts numbered but 696, or twenty-two per cent. Those convicted in the Court of Special Sessions were only 8 per cent, or in round numbers, 149, as compared with the 1,607 or ninety-two per cent employed.

TABLE XXXII—EMPLOYMENT STATUS OF CONVICTED OFFENDERS.

| COURTS | EMPLOYED | UNEMPLOYED |
|---|---|---|
| General Sessions and County ... | 2464 or 78% | 696 or 22% |
| Court of Special Sessions ..... | 1607 or 92% | 149 or 8% |

Most employed offenders were unskilled workers. Within this class are included all who lack a trade. The skilled workers were in

the minority. The unskilled group, naturaly, contains those for whom employment opportunities fluctuate most and are apt to be of short duration. The number both of skilled and unskilled offenders, who were employed when arrested, is set forth in the appended table.

TABLE XXXIII—OCCUPATION OF CONVICTED OFFENDERS.

| COURT | SKILLED | UNSKILLED |
|---|---|---|
| General Sessions and County ... | 820 or 33% | 1644 or 67% |
| Special Sessions ..... | 947 or 59% | 660 or 41% |
| Total ..... | 1767 | 2300 |

The majority of offenders were in the low income group. Whether or not this bears directly on their maladjustment is speculative. The inference is drawn that because many are economically underprivileged and therefore unable to afford marriage, they become sex offenders. This likewise is conjectural. It has even been suggested that economic inability to patronize prostitutes impels some to commit sex crimes. No statistics on this point are available. The statistics below show the economic status, in wage levels, of the offenders studied.

TABLE XXXIV—WAGE LEVELS OF CONVICTED OFFENDERS.

(A) Convicted in General Sessions and County Courts.[1]

| | $1-15 | $16-25 | $26-35 | $36-45 | $45 AND OVER | TOTAL |
|---|---|---|---|---|---|---|
| Skilled ..... | 89 | 271 | 170 | 60 | 52 | 642 |
| Unskilled ..... | 706 | 478 | 95 | 13 | 2 | 1294 |
| Total ..... | 795 | 749 | 265 | 73 | 54 | 1936 |
| Per Cent ..... | 41% | 38% | 14% | 4% | 3% | 100% |

(B) Convicted in Court of Special Sessions.[2]

| | $1-15 | $16-25 | $26-35 | $36-45 | $45 AND OVER | TOTAL |
|---|---|---|---|---|---|---|
| Skilled ..... | 110 | 227 | 155 | 66 | 52 | 610 |
| Unskilled ..... | 218 | 133 | 30 | 2 | 4 | 387 |
| Total ..... | 328 | 360 | 185 | 68 | 56 | 997 |
| Per Cent ..... | 33% | 36% | 18% | 7% | 6% | 100% |

[1] Data procurable in 1936 of 3295 cases.
[2] Data procurable in 997 of 2414 cases.

The unemployed offender depended for his maintenance either upon his family or public relief assistance. Case histories in General Sesions and the County Courts supply an illustrative sample. Thus in 552, where such information was given, 312 unemployed offenders were maintained by their kin. Public relief recipients numbered 233, while only 5 were aided by private welfare agencies. Two offenders were assisted by friends.

In a nutshell, then, the sex offender differs little from other kinds of offenders. Often he is a socio-economic, as well as a personality problem. Any attempt to study him, therefore, must embrace the whole person, not merely the sexual side of his make-up.

# CHAPTER VIII.

## THE SEX OFFENDER AS A RECIDIVIST.

*First offenders commit most sex crimes.* About six offenders in every ten convicted of sex crimes had no criminal record. Even the four with records *usually had been arrested before, but for other than sex offenses. Statistics thus repel any suspicion that the recidivist is most to blame for sex crime.*[1]

The present findings are documented by criminal records in 3,295 case histories of convicted offenders charged with indictable crimes in the decade 1930 to 1939. Probation departments, particularly in the Court of General Sessions, round out a police record by consulting additional sources. Among them are the Federal Bureau of Investigation, state and municipal correction departments, the Magistrates' and Domestic Relations courts, and when needed, police and probation bureaus in other cites. The result is a dossier that reveals offenses for which a defendant may not even have been fingerprinted.

Recidivism likewise was studied independently of case histories. The fingerprints of sex offenders convicted during 1930 in General Sessions, the County Courts and the Court of Special Sessions, were cleared through the Police Department. A before-and-after picture of their recorded criminal careers thereby was obtained that supplements the larger study founded upon case histories. The follow-up study covered 558 persons convicted of indictable sex felonies and also of the misdemeanors of impairing morals and indecent exposure. The data from this follow-up study is presented in the next section.

### I. Recidivism Among Indicted Offenders.

Indictable sex crimes are the most serious. Persons accused of such crimes naturally would be expected to be the most prone to have records. Statistics conclusively prove, however, that *most offenders charged with sex felonies are without prior police records.* Moreover, convicted sex offenders are less inclined to have had police records than other types of felons. Sixty-one per cent or 2,001 out of 3,295 convicted sex offenders, *had no criminal records* as against 35% for all

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[1] Recidivism, of course, is calculable only in units of arrests or convictions for known crimes. It cannot include undetected crimes. This is a serious but unavoidable limitation upon our data.

other types of felons. Conversely 39% of the sex offenders had records of prior arrests or conviction as compared with 65% of all felons.[1]

The recidivist offender, that is, the offender with a record, leads in abduction and forcible rape. Men without records are responsible mainly for statutory rape. Only one-third of the convicted offenders who had been charged with statutory rape had prior records. Those charged with sodomy also included a high percentage of first offenders. In both groups of cases, namely, offenders charged with statutory rape and sodomy, there were also high percentages of youthful offenders. This combination of youth and absence of a record suggests that sodomy and statutory rape may be transitory episodes in the life of a considerable number of sex offenders. There were too few cases of seduction and incest on which well founded conclusions might be based. Of the offenders who were charged with carnal abuse, the greater percentage (53%) had no record prior to their conviction.

TABLE XXXV—RECIDIVISM IN RELATION TO INDICTABLE CRIMES.

| CRIME | CASES | OFFENDERS WITH RECORDS | PER CENT | OFFENDERS WITHOUT RECORDS | PER CENT |
|---|---|---|---|---|---|
| Abduction ..... | 63 | 34 | 54 | 29 | 46 |
| Carnal Abuse ..... | 333 | 158 | 47 | 175 | 53 |
| Incest ..... | 98 | 42 | 43 | 56 | 57 |
| Rape-Forcible .... | 418 | 215 | 52 | 203 | 48 |
| Rape-Statutory ... | 1948 | 666 | 34 | 1282 | 66 |
| Seduction ..... | 21 | 6 | 29 | 15 | 71 |
| Sodomy ..... | 414 | 173 | 42 | 241 | 58 |
| Total ..... | 3295 | 1294 | 39% | 2001 | 61% |

The habitual sex offender, who specializes in the commission of sex crime, is the least conspicuous figure among the offenders with criminal records. Only 122 of the 1,294 sex offenders with criminal records, or *barely 9%, had been previously arrested for sex crime exclusively.* Another 176 offenders, or 14%, however had mixed records

[1] The data on records of felons convicted of non-sex crimes was obtained from "A Decade of Probation".

The conclusion that sex crimes are largely the work of offenders who have had their first conflict with the law, is further strengthened when the data on juvenile delinquency is examined. Of the 2,001 offenders convicted of sex crime in 1930-1939 and whom we classified as first offenders, only 206 or 10% had previously been adjudged juvenile delinquents. It may be noted that among the 1,294 convicted sex offenders with records, 361 or 28% had prior Children's Court experience.

of arrests for sex and non-sex crimes. Thus, *only 298 offenders, or 23% of all recidivists, had at any time before been arrested for a sex crime. A majority of all recidivists (775 or 77%) had records exclusively of non-sexual crimes.* It is to be noted that the 298 offenders who had prior records of sex crimes in their criminal records, represented only 9% of the total of 3,295 offenders studied.

This finding goes through to the core of the sex offender question. Decidedly the answer to sex crime is not the recidivist. Decidedly also, whenever a recidivist is implicated in a sex crime, his record in seven out of ten cases reveals a pattern of general criminality, not of sexual crime. The best example is the rapist, particularly one accused of forcible rape. In all, 215 offenders with records were charged with forcible rape. Only 39 or 14% had a record of previous sex crimes as against 176 or 86% with records for non-sex crimes exclusively. Men indicted for statutory rape displayed an almost identical trend, since only 17% of the offenders with records had committed other sex crimes in the past.

TABLE XXXVI—PRIOR CRIMES IN RELATION TO PRESENT CRIMES OF SEX OFFENDERS WITH RECORDS.

| PRESENT CASES | | PREVIOUS CRIMES | | | | | |
|---|---|---|---|---|---|---|---|
| | | SEX | % | SEX & NON-SEX | % | NON-SEX | % |
| Abduction ..... | 34 | | | 9 | 26 | 25 | 74 |
| Carnal Abuse .... | 158 | 34 | 22 | 38 | 24 | 86 | 54 |
| Incest ..... | 42 | 3 | 7 | 7 | 17 | 32 | 76 |
| Rape-Forcible ... | 215 | 9 | 4 | 22 | 10 | 184 | 86 |
| Rape-Statutory .. | 666 | 46 | 7 | 70 | 10 | 550 | 83 |
| Seduction ..... | 6 | | | 1 | 17 | 5 | 83 |
| Sodomy ..... | 173 | 30 | 17 | 29 | 17 | 114 | 66 |
| Total ..... | 1294 | 122 | 9% | 176 | 14% | 997 | 77% |

By and large persons who commit such crimes as incest, sodomy and even carnal abuse, can be classed as abnormal offenders. The crimes they engage in are either abnormal per se or the age disparity of the offender and his victim suggests abnormality in the offender. It is not surprising then that the abnormal offender is usually the most serious sex recidivist. The recidivist offenders who had been charged with carnal abuse, sodomy and incest, had the highest percentage of previous sex criminality in their criminal records. For example, 46%

of the offenders charged with carnal abuse, 34% of those charged with sodomy, and 24% of those charged with incest, had prior records of sex crime.

The other recidivist offenders, whose crimes are not abnormal per se and whose records are non-sexual, raise the question as to whether crime with them is not primarily an offshoot of criminal propensities rather than of any abnormalities of personality. The forcible rapist is an instance in point. Along with rape, he sometimes robs or burglarizes. The rape in such cases frequently is incidental, as prologue or epilogue to the other crime. Rape by a gang is another example. As records of those arrested therefor frequently indicate, there is a more pronounced criminal than sexual slant to these offenders. Thus, some who are classed as sex offenders are first and foremost criminals, and none more so than the recidivist with a lengthy record of non-sexual crimes. The alcoholic who becomes involved in a rape while under the influence of alcohol is also a case in point of an offender whose sex crime is not necessarily the result of any sexual abnormality. The records of such offenders frequently indicate that alcoholism has more than once brought them into conflict with the law for other than sexual offenses.

The misconception is not uncommon that crimes often are the work of men with a facility for escaping conviction. The repeatedly arrested but released sex offender is a special bogey. Our records on recidivism indicate that the sex offender has had no unusual facility for escaping conviction. Not every recidivist, it is true, was convicted before. Relatively few, however, escaped conviction. Only 276 out of the 1294 with prior records had escaped conviction altogether on prior charges. It is to be noted that 224 of these 276 offenders were charged with non-sexual crimes in the past. 52 offenders had at some time or other in the past been arrested but not convicted for sex crimes. All but 4 of these 52 offenders had been arrested but once before on a charge of sex crime and not convicted. The other 4 had been accused twice of sex crimes and escaped conviction each time. No recidivist sex offender was charged more than twice with a sex crime and not convicted.

The recidivist offenders were not invariably dangerous criminals. Felons were far fewer than misdemeanants. 299 or 29% of the offenders with prior convictions were felons, and 718 or 71% had misdemeanor convictions.

Rarely does the recidivist offender attain that high water mark of criminals, a fourth felony conviction. Only 12 of the 299 felons at-

tained this goal. None of these 12, however, was a sex felon four times. *In fact, no recidivist was convicted more than twice of a sex felony, and there were only 6 offenders in this category.* Each of the 12 fourth offenders had been convicted only once before of a sex felony. The 3 other convictions were for non-sexual crimes.

## II. The Later Careers of Sex Offenders.

As we have seen in the prior section a sex offender ordinarily is not a careerist in crime. Sporadic with some, sex crime is a single episode in the lives of many. A handful only are constantly criminal. These facts are further demonstrated by our study of the post conviction careers of 555 offenders convicted in 1930 of sex crimes. Almost a twelve year perspective on their criminal careers thereby was obtained. Ample time, therefore, for any offender to have served a ten year prison term and again be at large. Adequate time also to determine whether crime with these men was episodical in character or second nature.

The number chosen is comprehensive and varied enough. All save 183 were initially charged with indictable sex crimes. The other 183 were convicted of the misdemeanors of impairing morals (129) and of indecent exposure (54). A dozen or so had not been fingerprinted upon conviction. Case histories supplied the identification for locating them in police files. The latter included any records reported by the Federal Bureau of Investigation. The records accordingly are complete enough, except in one respect: Offenses may be omitted therefrom for which no fingerprints were taken. Of itself, this signifies they were minor in nature.

Criminal records alone were traced. The offenders' later socio-economic history could not be compiled. To do so required trained personnel, which was unavailable.

Twelve years after conviction, only one-third of the 555 offenders (191 or 34%) have reappeared in a police line-up. Two-thirds, therefore (364 or 66%) remained without police records for more than a decade. This was so despite the fact that 70 of these 364 convicted sex offenders had police records prior to their 1930 sex convictions, although they managed to stay out of trouble subsequently. The fact that two-thirds of the sex offenders convicted in 1930 failed to reappear in police line-ups after the lapse of a decade is convincing proof that *sex crime is not habitual behavior with the majority of sex offenders.*

## TABLE XXXVII—CRIMINAL CAREERS.

A. *Offenders with no Record after 1930 Conviction for Sex Crime.*

| | | |
|---|---|---|
| No Record | 294 | 53 |
| Record Before 1930 Only | 70 | 13 |
| WITH NO LATER RECORD | 364 | 66% |

B. *Offenders with Record after 1930 Conviction.*

| | | |
|---|---|---|
| Record after 1930 only | 102 | 18 |
| Record before and after 1930 | 89 | 16 |
| WITH LATER RECORD | 191 | 34% |
| TOTAL | 555 | 100% |

Where the sex offender is a recidivist, he would be expected to revert to the same type of crime. As we have seen in the prior section, however, the sex offender who specializes in sex crime exclusively are few in number. A study of the criminal records of the 191 offenders who got into trouble after their 1930 conviction for sex crime buttresses this conclusion. Only 40 of these 191 offenders, or about one-fifth of those with records, were again arrested for sex crimes. It may be noted that these 40 cases represent scarcely 7% of all the 555 offenders whose records were traced from the year 1930. Thus it is evident that 93% of these 555 offenders swerved away from sex crime. This finding is a clear refutation of the notion that sex crime assumes in most individuals a prolonged and even permanent character. The findings suggest the reverse. It is singularly episodic with many. Only 7% of our cases again reverted to sex crime after eleven years had elapsed.

These findings confirm our conclusions of the previous section that sex crime is not habitual behavior for most convicted sex offenders. There we noted that only 9% of 3,295 convicted sex offenders had prior arrests for sex crime in their criminal records.

Of the 40 offenders whose records we traced from 1930 and who were re-arrested for sex crime, 9 were either acquitted or discharged on the new charges. The other 31 however were again convicted of sex crimes after 1930. Two of this group were convicted three times (of indecent exposure)[1] and four were convicted twice. The rest, 25 in all,

[1] This was the same crime for which these two offenders were convicted in 1930.

were convicted only once again after their 1930 conviction. In general these 31 offenders tended to be convicted of the same type of sex misbehavior which caused their 1930 conviction.

The sentences meted out to the repeaters were severe enough. All but two were committed to penal institutions. The most significant sentences involved four offenders convicted of indecent exposure were later adjudged insane and committed. The two others convicted of impairing morals subsequently were found to be mental defectives. None of the four appears to have undergone medical-psychiatric examinations upon his first conviction.

The sex repeater was not the most vicious of the offenders with records after 1930. Credit for that goes to six recidivists with records *for non-sexual crimes only.* Apart from the 1930 conviction, none had ever been convicted before of a sex crime, evidence, therefore, that sex was merely a side-line to their major criminal activities. This is substantiated by other facts in their later careers. Two were convicted of murder. Two were shot and killed in gang warfare. One, similarly shot, survived to serve a thirty year term for robbery. The sixth committed suicide while being sought as a robbery suspect. All six were convicted once as rapists.

In substance, then, the average sex offender's criminal career seldom is prolonged. Even less seldom is it continuously sexual. When persistent at all, the design is usually criminal, not sexual. The average sex offender is often the less troublesome than the recidivist offender in the non-sexual field, who incidentally becomes involved in a sex crime. These facts indicate that the recommendation that all sex offenders be segregated for life is completely unrealistic and unwise. Such segregation however may be warranted for the abnormal sex offenders who have persistent patterns of sex misbehavior in their records. As we have seen this group is small in number. This makes it possible to segregate them within existing institutions and to provide adequate programs of remedial and custodial care within such institutions. The creation of a separate, specialized institution devoted solely to sex offenders is not warranted by our findings.

# APPENDIX I

## Sex Felonies for Which Offenders Were Indicted in Relation to Crimes for Which They Were Actually Convicted— County Courts and Court of General Sessions, 1930-9

| CRIME | INDICTMENT | CONVICTION | TRIAL | PLEA | TOTAL |
|---|---|---|---|---|---|
| | | *Felonies* | *12* | *22* | *34* |
| ABDUCTION (63 Cases) | *Abduction* | Abduction | 9 | 9 | 18 |
| | | Abd. & Assault 2nd | 0 | 1 | 1 |
| | | Att. Abduction | 0 | 5 | 5 |
| | | Assault 2nd | 0 | 2 | 2 |
| | | Carnal Abuse | 0 | 1 | 1 |
| | | Rape 2nd | 0 | 1 | 1 |
| | *Abduction & Kidnapping* | Abduction | 2 | 1 | 3 |
| | | Att. Abduction | 0 | 2 | 2 |
| | *Abduction & Rape 1st* | Abduction | 1 | 0 | 1 |
| | | MISDEMEANORS | *0* | *29* | *29* |
| | *Abduction* | Assault 3rd | 0 | 24 | 24 |
| | | Conspiracy | 0 | 1 | 1 |
| | | Impairing Morals | 0 | 4 | 4 |
| | | *Felonies* | *50* | *89* | *139* |
| CARNAL ABUSE (333 Cases) | *Carnal Abuse* | Carnal Abuse | 39 | 54 | 93 |
| | | Att. Carnal Abuse | 1 | 1 | 2 |
| | | Assault 2nd | 4 | 15 | 19 |
| | | Att. Assault 2nd | 0 | 2 | 2 |
| | *Carnal Abuse & Att. Rape 1st* | Att. Rape 2nd | 0 | 1 | 1 |
| | *Carnal Abuse & Rape 2nd* | Carnal Abuse | 1 | 0 | 1 |
| | | Rape 2nd | 0 | 1 | 1 |
| | | Assault 2nd | 0 | 1 | 1 |
| | *Carnal Abuse & Sodomy* | Carnal Abuse & Sod. | 1 | 1 | 2 |
| | | Carnal Abuse | 2 | 3 | 5 |
| | | Sodomy | 1 | 4 | 5 |
| | | Assault 2nd | 0 | 4 | 4 |
| | *Carnal Abuse & Att. Sodomy* | Carnal Abuse & Att. Sodomy | 1 | 0 | 1 |
| | *Carnal Abuse & Burglary 1st* | Burglary 2nd | 0 | 1 | 1 |
| | *Carnal Abuse & Assault 2nd* | Assault 2nd | 0 | 1 | 1 |

# *Appendix I*

| CRIME | INDICTMENT | CONVICTION | TRIAL | PLEA | TOTAL |
|---|---|---|---|---|---|
| CARNAL ABUSE (Continued) | | MISDEMEANORS | *10* | *184* | *194* |
| | *Carnal Abuse* | Impairing Morals | 9 | 123 | 132 |
| | | Assault 3rd | 0 | 47 | 47 |
| | | Disorderly Conduct | 0 | 1 | 1 |
| | *Carnal Abuse & Abduction* | Imp. Morals | 0 | 1 | 1 |
| | *Carnal Abuse & Assault 2nd* | Assault 3rd | 0 | 1 | 1 |
| | *Carnal Abuse & Kidnapping* | Imp. Morals | 0 | 1 | 1 |
| | *Carnal Abuse & Rape 2nd* | Imp. Morals | 1 | 2 | 3 |
| | *Carnal Abuse & Sodomy* | Imp. Morals | 0 | 7 | 7 |
| | | Assault 3rd | 0 | 1 | 1 |
| | | *Felonies* | *13* | *60* | *73* |
| INCEST (98 Cases) | *Incest* | Incest | 9 | 24 | 33 |
| | | Att. Incest | 0 | 2 | 2 |
| | | Rape 1st | 1 | 0 | 1 |
| | | Rape 2nd | 0 | 1 | 1 |
| | | Assault 2nd | 1 | 16 | 17 |
| | *Incest & Rape 1st* | Rape 1st | 0 | 1 | 1 |
| | *Incest & Rape 2nd* | Incest | 0 | 2 | 2 |
| | | Incest & Rape 2nd | 1 | 1 | 2 |
| | | Rape 2nd | 1 | 1 | 2 |
| | | Assault 2nd | 0 | 9 | 9 |
| | | Att. Assault 2nd | 0 | 1 | 1 |
| | *Att. Incest* | Assault 2nd | 0 | 2 | 2 |
| | | MISDEMEANORS | *2* | *23* | *25* |
| | *Incest* | Assault 3rd | 1 | 17 | 18 |
| | *Incest & Rape 2nd* | Assault 3rd | 0 | 5 | 5 |
| | | Imp. Morals | 1 | 1 | 2 |

# *Appendix I*

| CRIME | INDICTMENT | CONVICTION | TRIAL | PLEA | TOTAL |
|---|---|---|---|---|---|
| RAPE—FORCIBLE (418 Cases) | | *Felonies* | *128* | *146* | *274* |
| | *Rape* | Rape 1st | 57 | 7 | 64 |
| | | Att. Rape 1st | 4 | 5 | 9 |
| | | Rape 2nd | 9 | 15 | 24 |
| | | Att. Rape 2nd | 0 | 2 | 2 |
| | | Assault 2nd | 16 | 66 | 82 |
| | | Att. Assault 2nd | 0 | 9 | 9 |
| | | Abduction | 1 | 1 | 2 |
| | | Carnal Abuse | 0 | 2 | 2 |
| | *Rape 1st & Kidnapping* | Rape 2nd | 0 | 1 | 1 |
| | *Rape 1st Kidnapping & Sodomy* | Rape 1st | 1 | 0 | 1 |
| | | Rape 1st & Sodomy | 1 | 0 | 1 |
| | *Kidnapping & Assault 2nd* | Assault 2nd | 0 | 4 | 4 |
| | *Rape 1st & Burg. 1st* | Rape 1st & Burg. 1st | 0 | 1 | 1 |
| | | Rape 1st & Burg. 2nd | 1 | 0 | 1 |
| | | Att. Rape 1st | 1 | 0 | 1 |
| | *Rape 1st & Burg. 2nd* | Rape 1st & Burg. 2nd | 1 | 0 | 1 |
| | *Rape 1st & Grand Larceny 1st* | Rape 1st & Robbery 1st | 1 | 0 | 1 |
| | *Rape 1st & Robbery 1st* | Robbery 1st & Burg. 1st | 2 | 0 | 2 |
| | | Robbery 1st & Assault 3rd | 1 | 0 | 1 |
| | *Rape 1st & Sodomy* | Rape 1st & Sodomy | 1 | 0 | 1 |
| | | Assault 2nd | 1 | 0 | 1 |
| | *Rape 1st & Att. Sodomy* | Rape 1st | 2 | 1 | 3 |
| | *Att. Rape 1st* | Att. Rape 1st | 15 | 7 | 22 |
| | | Att. Rape 2nd | 1 | 1 | 2 |
| | | Assault 1st | 0 | 1 | 1 |
| | | Assault 2nd | 11 | 16 | 27 |
| | | Att. Assault 2nd | 0 | 4 | 4 |
| | *Att. Rape 1st & Burglary 1st* | Assault 2nd | 0 | 2 | 2 |
| | *Att. Rape 1st & Imp. Morals* | Att. Rape 1st & Assault 2nd | 1 | 0 | 1 |

# *Appendix I*

| CRIME | INDICTMENT | CONVICTION | TRIAL | PLEA | TOTAL |
|---|---|---|---|---|---|
| RAPE—FORCIBLE (Continued) | | | | | |
| | *Att. Rape 1st & Petit Larceny* | Assault 2nd & Petit Larceny | 0 | 1 | 1 |
| | | MISDEMEANORS | *6* | *138* | *144* |
| | *Rape 1st* | Adultery | 0 | 2 | 2 |
| | | Assault 3rd | 0 | 91 | 91 |
| | | Imp. Morals | 0 | 3 | 3 |
| | *Att. Rape 1st* | Assault 3rd | 5 | 37 | 42 |
| | | Att. Assault 3rd | 0 | 1 | 1 |
| | | Imp. Morals | 0 | 1 | 1 |
| | *Att. Rape 1st & Burglary 1st* | Unlawful Entry | 0 | 1 | 1 |
| | *Att. Rape 1st & Robbery 1st* | Assault 3rd | 0 | 2 | 2 |
| | *Assault 2nd* | Assault 2nd & 3rd | 1 | 0 | 1 |
| RAPE—STATUTORY (1948 Cases) | | *Felonies* | *128* | *266* | *394* |
| | *Rape 2nd* | Rape 2nd | 104 | 89 | 193 |
| | | Att. Rape 2nd | 5 | 32 | 37 |
| | | Abduction | 7 | 1 | 8 |
| | | Att. Abduction | 0 | 1 | 1 |
| | | Assault 2nd | 6 | 102 | 108 |
| | | Att. Assault 2nd | 1 | 35 | 36 |
| | | Carnal Abuse | 0 | 1 | 1 |
| | *Rape 2nd & Kidnapping* | Rape 2nd | 0 | 1 | 1 |
| | *Att. Rape 2nd* | Att. Rape 2nd | 3 | 2 | 5 |
| | | Assault 2nd | 2 | 2 | 4 |
| | | MISDEMEANORS | *9* | *1545* | *1554* |
| | *Rape 2nd* | Assault 3rd | 4 | 1507 | 1511 |
| | | Impairing Morals | 1 | 23 | 24 |
| | *Att. Rape 2nd* | Assault 3rd | 4 | 14 | 18 |
| | | Impairing Morals | 0 | 1 | 1 |

# *Appendix I*

| CRIME | INDICTMENT | CONVICTION | TRIAL | PLEA | TOTAL |
|---|---|---|---|---|---|
| SEDUCTION (21 Cases) | | *Felonies* | *3* | *10* | *13* |
| | *Seduction* | Seduction | 3 | 9 | 12 |
| | | Assault 2nd | 0 | 1 | 1 |
| | | MISDEMEANORS | *0* | *8* | *8* |
| | | Assault 3rd | 0 | 8 | 8 |
| SODOMY (414 Cases) | | *Felonies* | *51* | *162* | *213* |
| | *Sodomy* | Sodomy | 39 | 61 | 100 |
| | | Att. Sodomy | 2 | 12 | 14 |
| | | Carnal Abuse | 0 | 3 | 3 |
| | | Assault 2nd | 5 | 70 | 75 |
| | | Att. Assault 2nd | 0 | 4 | 4 |
| | *Sodomy & Carnal Abuse* | Sodomy & Carnal Abuse | 2 | 0 | 2 |
| | | Carnal Abuse | 0 | 1 | 1 |
| | *Sodomy & Burglary 1st* | Burglary 1st | 0 | 1 | 1 |
| | *Robbery 1st & Grand Larceny 1st* | Robbery 3rd | 0 | 1 | 1 |
| | *Att. Sodomy* | Att. Sodomy | 2 | 4 | 6 |
| | | Assault 2nd | 0 | 4 | 4 |
| | | Att. Assault 2nd | 0 | 1 | 1 |
| | *Att. Sodomy & Burglary 3rd* | Att. Sodomy & Burglary 3rd | 1 | 0 | 1 |
| | | MISDEMEANORS | *10* | *191* | *201* |
| | *Sodomy* | Assault 3rd | 1 | 113 | 114 |
| | | Conspiracy | 0 | 2 | 2 |
| | | Impairing Morals | 7 | 66 | 73 |
| | | Indecent Exposure | 0 | 2 | 2 |
| | *Att. Sodomy* | Assault 3rd | 0 | 5 | 5 |
| | | Impairing Morals | 2 | 1 | 3 |
| | *Assault 2nd* | Assault 3rd | 0 | 2 | 2 |